

PAKISTANI OPTIONS FOR RESOLUTION OF
THE KASHMIR DISPUTE

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General Studies

by

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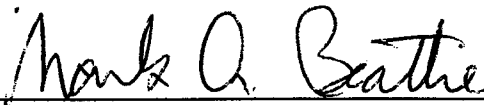
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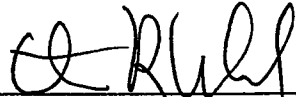
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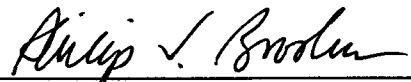
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The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the U.S. Army Command and General Staff College or any other governmental agency; or that of the Government of Pakistan. (References to this study should include the foregoing statement.)

ABSTRACT

PAKISTANI OPTIONS FOR RESOLUTION OF THE KASHMIR DISPUTE by
Major Ahmad Mahmood Hayat, Pakistan, 120 pages.

The Kashmir problem is the oldest unresolved issue on the UN agenda. The present popular uprising in the Indian-held Kashmir has redeemed a forgotten cause; and the nuclear testing by both India and Pakistan sprung the issue back on the international scene, and without resolving this focal issue, a lasting peace in South Asia will remain elusive.

This study deals with the issue from its origin to the present with an effort to analyze the problem impartially and dispassionately to provide an objective understanding of the dispute. However, the conclusions drawn and the options recommended are solely from a Pakistani perspective.

The study explains the intricacies of this complex border dispute, which over the years has been elevated to an ideological tug of war between India and Pakistan. All of this in the melee of passion for the disputed land, legal claims, moral ascendancy, and a growing Kashmiri nationalism, not to mention the fast changing international backdrop. The paper promotes a fresh approach for Pakistan in order to engage India in a meaningful dialogue on the issue and to involve the international community to fulfill its obligation. The Kashmiri nationalism has emerged as a potent third party to the dispute and thus is addressed. A multipronged approach for Pakistan has been proposed on the covert unilateral and overt bilateral and multilateral planes in order to work on all possible facets of the problem.

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CHAPTER 1

INTRODUCTION

Introduction

The valleys of Kashmir have been a disputed territory between India and Pakistan for the last half of the century. Both countries have gone to war twice over this dispute; however, the problem remains unresolved in spite of United Nations Security Council resolutions on the issue. Emotions run high on either side of the fragile Line of Control which divides Kashmir in the South Asian subcontinent. With an accelerated arms race ongoing in the region, Kashmir emerges as a regional as well as a global flash point in the new world order. The recent declared nuclear power status of both belligerent countries has raised the stakes tremendously in the region. Even though the world today focuses on the intellectual facets of the issue, the comity of nations does little or nothing to resolve the longest *unresolved* issue on the agenda of the United Nations Security Council, nor has the UN been able to prevent this simmering conflict from breaking out in the past.

Both Pakistan and India remain unmoved and stick to their respective traditional stances on the issue; while the people of Kashmir have once again risen against the status quo and are engaged in a struggle for their rights in the form of a guerrilla campaign against the Indian government. Pakistan on the other hand, is caught in an arms race with India, a race its ailing economy can ill afford. It is time for all concerned to search for workable options aiming at resolution of the dispute in consonance with the norms of international justice, legality of divergent claims, and logic. The people of the entire

region in general and the people of Kashmir in particular have suffered too much misery and war to allow this conflict to linger on.

Topic

This thesis will aim at realizing the importance of the Kashmir dispute in its regional text and will endeavor to discuss the legitimacy of divergent claims over the region. The thesis will examine options available to Pakistan and recommend a suitable option for resolution of the dispute, one that takes into account the cannons of justice and the respective positions of the concerned parties. Thus the topic is: The criticality of Kashmir dispute in the fragile security environments of South Asia and the options available to Pakistan for resolution of the dispute.

Scope

The issue here is twofold: first, to unravel the legitimacy of the divergent claims and second, to find a viable option for resolution of the problem acceptable to all concerned with the interests of Pakistan at the premium. This thesis will aim at encompassing the following major aspects or factors of the Kashmir dispute that have an overbearing significance on the problem :

1. An adequate plunge into Kashmiri history
2. The genesis of the Kashmir problem including its present state
3. Indian and Pakistani standpoints on the issue; to include a legal rebuttal of the Indian claim.
4. The Kashmiri Perspective.
5. Viable options for resolution of the issue.

6. Conclusions and recommendations

Background

By the start of the twentieth-century, modern European imperialism had compelled a redrafting of the political map of the Asian and the African lands that had been brought under colonial rule from the seventeenth-century onwards. With imperialism's retreat in the second half of the twentieth-century, the map of these lands was substantially redrawn. Mostly, these redrawings took place under divergent pressures and contradictions of decolonization, and more often than not, under circumstances that precluded consistent observance of rational rules of territorial delimitation. Fortunately, this reallocation of territorial sovereignty was accepted in most cases. In a number of cases, however, the end of colonial rule left in its wake serious disputes over the placement of new boundaries. These disputes having differing roots were of differing types and were far from uniform in the degree of resistance that they put up against negotiated settlement. Of those that have persisted as major sources of international conflict to the eve of the new millennium, none is more complicated and more multifaceted for the contending successor states than the dispute over Kashmir between Pakistan and India.

The Kashmir issue was born amidst circumstances that were uniquely well tailored to stir up bitter controversy. Within the jurisdictionally complex framework of the British Indian empire, Kashmir had retained a quasi-autonomous status in a feudal arrangement that placed a Hindu maharaja (sovereign) in control of an overwhelmingly Muslim principality. British authority over Kashmir and the other princely states lapsed

in August 1947. The decision of whether Kashmir would opt for the Hindu majority India or the Muslim majority Pakistan (in line with the rules and parameters of partition agreed upon by the British and the two successor governments) thus fell upon the then Hindu ruler, Maharaja Hari Singh. The Maharaja delayed making a decision until after the Britain's withdrawal; this procrastination was fateful. It offered a tempting opportunity for each of the newly empowered governments of India and Pakistan to endeavor through all available means to convince the Maharaja to accede to their respective state. Neither government resisted the temptation and the Maharaja came under heavy pressure from both. Consequently when a *doubtful and contested* decision favoring India came in late October of 1947 (one that arguably negated the rules and parameters of the Partition Plan), it was instantly rejected as unfair, fraudulent, and nonbinding by Pakistan.

Importance of the Kashmir Dispute

The resulting standoff over Kashmir has continued for over fifty years. This standoff has borne a heavy share of responsibility for the two wars between Pakistan and India, for the massive arming of both sides and for the entanglement of both in Cold War alliances. It has inflicted immeasurable costs on their social, economic, and political systems, and it has been an enormous impediment to the normalization of relations between them. Moreover with the passage of time, the Kashmir dispute does not seem to have lost any of its capacity to generate the most intense distrust and hatred between them.

The Kashmir issue is the single most important cause of instability in the South Asian Subcontinent for the last half century. The severity of the dispute on the one hand and the adamant nontrusting animosity of India and Pakistan on the other hand have made it into one of the longest simmering issues on the globe and have even enabled it to out live the long-drawn Cold War. In fact today, the two countries have long been into a cold war of their own, leading into the dangerous arms race in the region and keeping the security threshold hanging by a thread. In another context, the Kashmir dispute appeals to the moral conscience of the world community owing to the blatant human rights violations perpetrated on the people of this ill-fated region. The population of the subcontinent has reached a staggering one billion people, and even if the world community tries to shun its responsibility, it cannot do so for an indefinite period. The geostrategic location of the subcontinent raises the criticality of the one issue that threatens lasting peace in this region, namely Kashmir.

Questions

Primary. What options are available to Pakistan for resolution of the Kashmir dispute ?

Secondary. (1) What is the nature and or genesis of the Kashmir dispute? (2) What is the legitimacy of the Indian claim over Kashmir, and how are these claims refuted by Pakistan? (3) What is the Kashmiri perspective in the backdrop of the ongoing struggle in the occupied valleys? And (4) What if any, are considered to be viable solutions to the problem?

Assumptions

1. It will be assumed that a future conflict in South Asia may not confine itself to conventional warfare.
2. The world community is interested in a peaceful solution of the problem.
3. Publicly available sources address all facets of the problem.

Anticipated Problems

The study of boundaries is dangerous . . . because it is thoroughly charged with political passions and entirely encumbered with after thoughts. The people are too interested in the issues when they speak of boundaries to speak with detachment: the failing is permanent!¹

A. Siegfried

1. The largest looming problem emerges to be the bias of opinions expressed in the works available; the opinions are either solely Indian, Pakistani, or Western.
2. The issue at hand is complex, and this thesis cannot possibly cover all facets of it.
3. The dead lock over Kashmir has assumed a quasi-permanence.

Solutions

1. The author will make an endeavor to strike a logical balance between the varying opinions.
2. The author will delimit the thesis to the scope.
3. The author will endeavor to propose a new approach for resolution of the problem, one that caters for the present ground realities.

Significance of This Study

This thesis endeavors to make a contribution in the *present* situation and developments of the dispute. This by no means downplays the importance of the history, the genesis and the roots of the dispute. On the contrary, knowledge of these aspects remain acutely relevant to a contemporary understanding of the dispute and must be examined in some detail. The conviction is that the dispute has entered a fundamentally new phase in its history in the last decade or so and that the changes are fundamental and provide a renewed opportunity for the resolution of the dispute.

This new phase is distinguished by important sets of changes in the geopolitical context of the Kashmir dispute. There have been changes in the internal political and military environment of Kashmir itself. Since 1989, there is a powerful separatist movement among Kashmiri Muslims in the Indian Held Kashmir (IHK) triggering a massive Indian military response to it. This has resulted in unprecedented violence and a popular alienation from the Indian government; focussing attention as never before on the Kashmiri political rights, including the right of self-determination. As a consequence, India has become vulnerable to embarrassing international criticism of its human rights record. The scenario also has provided Pakistan with a unique opportunity of increased moral and political support and has injected a new Kashmiri factor to the equation of Kashmir.

There have also been changes in the regional political and military environment equation of Pakistan-India relations. These include the transformation of Pakistan and India into nuclear weapon states, the acquisition by both countries of advanced ballistic

missile capabilities, the prolonged miniwar over the Indian occupation of the Siachin Glacier at the roof top of the world, a prohibitively costly exercise for both countries. The changes also include the reversion to civilian rule by Pakistan on one hand, and the rise of Hindu nationalism in India on the other. There are also indications of domestic instability in India in the wake of her conversion to an unstable multiparty system.

Other significant changes are in the extra regional and global political and military environments of Pakistan and India. These include Moscow's retreat from Afghanistan and the end of the cold war, the breakup of the Soviet Union and the emergence of a new tier of Islamic states in Central Asia, China's conversion to a market economy and its swift transformation into a regional superpower, renewed pacts of security ties between India and Russia, the emergence of new global norms in regard to the protection of ethnic minorities, and the observance of human rights. These changes have ushered in a new era in this volatile political and military scenario; one that has departed from the established norms of interrelationships in the region and especially in the subcontinent. This new wave of change that provides a window of opportunity for the resolution of the Kashmir dispute, thus the thesis is aimed at searching for a workable solution to the problem.

Parameters or Delimitations

The issue at hand is complex and intricate. The Kashmir dispute ranges from being a boundary problem to a separatist movement and also poses questions on human rights. It is virtually impossible to address all facets of the issue, and that is not the intent of this thesis. The thesis focuses on the resolution of the problem in light of the conflicting claims of sovereignty over Kashmir; done from a Pakistani perspective while

actors will be concise and confined to essential details only so as to portray how the picture looks on the larger canvas of world politics.

The search for *viable* options is perhaps the biggest challenge for this thesis. The new Kashmiri factor has to be accorded its due weightage; therefore, the inclusion of the Kashmiri perspective is critical. The alternative approaches of multilateral, third party mediation and the bilateral approach will be examined briefly. The alternative solutions may vary from accession through plebiscite to partition; or possibly autonomy or independence. These need to be studied as options for resolution of the problem, and a new approach suggested that provides an honorable way out for the main players.

¹Alaister Lamb. *Kashmir: A Disputed Legacy, 1846-1990* (London: Oxford Books, 1991), 1.

CHAPTER 2

HISTO-GEOGRAPHIC GENESIS OF KASHMIR DISPUTE

Over the vast Indo-Pakistan subcontinent looms an omnipresent shadow of conflict. Kashmir, the land of legend and beauty, is a regional trouble spot with international implications. It is torn between India's political philosophy of unity for the subcontinent and Pakistan's belief in a Muslim nationhood. Kashmir is the focal point of an acute regional dispute that has pitted India and Pakistan against one another ever since the two countries gained independence from the British Empire in August 1947. For India, the dispute poses the critical questions of protecting her diverse physical entity on the one hand and maintaining her vitally important secular status on the other. As far as Pakistan is concerned, Kashmir is an unfinished agenda of the partition plan of 1947. More importantly, Kashmir is a physical security concern as well as a threat to Pakistan's ideology, which, if left unresolved or unjustly resolved, would question the very existence of this ideological state. Pakistan and India have gone to war twice over Kashmir, leaving the erstwhile princely state divided and heavily militarized. The eruption of a massive and overtly pronounced anti-Indian sentiment in the Indian Held Kashmir (IHK) since 1989 has given rise to increased violence and has further complicated relations between the two countries. The recent nuclear explosions by both countries lend an even greater urgency to the search of an amicable settlement of the issue.

The Kashmir problem basically involves Pakistan, India, the Kashmiris, and the United Nations (UN). Owing to the impotence of UN on the issue, the intransigence of

India and the oblivious attitude displayed by the two super powers in the past, the problem has developed into a multidimensional international issue. It now encompasses political wranglings, international implications, human rights infringements, religious sentiments, and military involvement. A problem, which was simple enough to be tackled by India and Pakistan sitting across the table just after the partition, has gradually developed into a ticking time bomb, which, at any time, could explode into nuclear war between the two adversaries, bringing wholesale destruction in its wake.

The Kashmir problem started with the partition of British India and the emergence of the two independent states of India and Pakistan in 1947. At the time, there were about 564 independent princely states of varying sizes in British India, including Kashmir.¹ It was generally agreed and understood by all concerned, at that time, that these states would join either India or Pakistan. This decision was to be based upon the respective geographic dispositions of these states and the social, cultural, and religious aspirations of their people. In the aftermath of independence, the state of Jammu and Kashmir was absolutely indispensable for Pakistan. If it went to India, Pakistan would be rendered strategically indefensible, economically suffocated, and unjustly treated as the populace in Kashmir was predominantly Muslim. On the other hand, India wanted to hold onto the state as it gave her direct access to the Pakistani province of Sarhad or the North Western Frontier Province (NWFP) and also provided strategic links to Afghanistan, China, and the USSR (now the Central Asian Republics).² Hence the struggle to lure, coax, or coerce the ruler and the people of Kashmir into a favorable tilt commenced immediately after the independence between India and Pakistan.

History is an evolution of events and it is the relationship of the past with the present that gives us a perception of the future. "The farther backward one can look, the further forward one is likely to see."³ This context is especially important in the case of Kashmir as it has a historical and psychological dimension that is so dominating so as to inundate the most rational and objective of analysis. A critical look at the various facets of the dispute is of immense value in order to draw pragmatic conclusions that can assist in chalking out a future strategy or options for Pakistan.

Geography

The state of Jammu and Kashmir is spread over 84,471 square miles.⁴ (Refer to appendix A.) It occupies a strategic position in the extreme north west corner of the Indo-Pakistan subcontinent. It has common borders with Pakistan, India, Afghanistan, and China (through Tibet and Sinkiang). Only a fifty-mile stretch of unpopulated and inhospitable mountains separate it from the Central Asian Republics (CAR). Three main rivers of Pakistan--Indus, Jhelum, and Chenab--flow directly from Kashmir. While studying the geographic disposition of Kashmir, it would be pertinent to note that its borders are contiguous to Pakistan for about 500 miles while it touches India only over a narrow strip of about a dozen miles near Pathankot.⁵

Geographic Divisions

The state of Jammu and Kashmir is divided into the following three geographic divisions.⁶

1. The Jammu Division. It has an area of 8539 square miles. It is linked with the Kashmir division through Baniyal Pass over the Pir Panjal mountain range which is about

9,000 feet high. Its south and southwestern parts are open to Pakistan, while a narrow strip through Kathua links it to India.

2. The Kashmir Division. This division covers about 12,387 square miles of the territory. The main Kashmir valley is 84 miles by 25 miles, that is, a total area of 2,100 square miles.

3. The Indus Valley. It consists of Laddakh, Gilgit, Baltistan, and the Poonch areas. The average altitude is about 9,000 feet. The mighty River Indus flows through the center of this area. The region is contiguous to Pakistan to the west and south.

Administrative Divisions

For administrative convenience,⁷ the entire State of Jammu and Kashmir was divided into six units (refer to appendix B):

1. Gilgit in the north
2. Baltistan in the northeast
3. Laddakh in the east
4. Jammu in the south
5. Kashmir valley in the west
6. Poonch in the southwest

Terrain

The major part of the state of Jammu and Kashmir consists of mountainous terrain with an average altitude of about 9,000 feet. The terrain can be subdivided into the following four zones.⁸

1. The Outer Plains. This region lies in the Ravi-Jhelum corridor and borders with the districts of Jhelum and Gujrat in Pakistan and with Gurdaspur in India. It is generally a dry region. Major towns are Jammu, Akhnur, Samba, and Nowshera.
2. The Outer Low Hills. The area stretches from the southern plains to the mountains of Pir Panjal. Owing to excessive rainfall, the area is heavily forested.
3. The Middle Mountains. This region is generally surrounded by mountains and lies between Pir Panjal range in the south to the great Himalayan ranges in the north. The area is rich in agriculture and mineral resources.
4. The Inner Mountains. With Zaniskar ranges in the east, the region is spread over the Karakorum and the Hindukush mountain ranges in the northwest. The administrative units of Laddakh and Gilgit are located here.

In essence, Jammu and Kashmir is a land-locked state located close to the heartland of Asia. It is the shape of a trapezoid, with its two longer sides bordering Pakistan. With a population of four million people in 1941, it was the fourth most populated state in British India at the time of partition.⁹

Demography

Demographic Structure. The state of Jammu and Kashmir has considerable complexities. The heartland of Jammu had a considerable population of Hindus, the vale of Kashmir was predominantly Muslim, and the sparse population of Laddakh was Tibetan Buddhists; whereas Baltistan was comprised of Muslims.¹⁰ According to the population census carried in 1981, the total population of the state stands at 9,750,861; out of which 67 percent are Muslims and 33 percent non-Muslims which include Hindus,

Sikhs, Christians, and Buddhists.¹¹ However, the present distribution of the estimated 12 million people is:

- | | |
|-------------------------|---------------------------|
| 1. Under India | 6.5 million |
| 2. Under Pakistan | 2.5 million |
| 3. Refugees in Pakistan | 1.5 million |
| 4. Settled in UK | 0.3 million ¹² |

Ethnic Composition. According to the census of 1981, the ethnic composition of the main communities in different regions of the state (percentage wise) was¹³:

Table. Ethnic Composition

	% Muslims	% Hindus	%Others
1. Kashmir Valley	94.96	4.59	0.05
2. Jammu including Poonch and Rajauri	29.60	66.33	4.07
3. Ladakh	46.04	2.66	51.33
Total (State)	64.19	33.24	3.57

Note: Azad Jammu and Kashmir (AK), Gilgit and Baltistan have practically 100% Muslim population.

Demographic Change. The demographics in Kashmir have changed significantly since India occupied the valley in 1947. The overall percentage of Muslim population has been brought down from 78 percent at the time of partition to 64 percent today.¹⁴ The change has been significant in the Jammu region. According to the 1941 census,

Muslims constituted 61.3 percent of the population of Jammu; but the 1981 census puts the Hindu population at 66 percent and that of Muslims at 29 percent. This decrease in population has no reasonable explanation except deliberate underestimation of Muslims and overestimation of Hindus by the census staff, manned and supervised by Hindus.¹⁵ It also indicates the increased Hindu settlements in the area.

Cultural Differences. The Hindu sociocultural life, as in the rest of the subcontinent, differs largely from that of the Muslims, and this cultural divide is clearly visible in Kashmir. Within the Muslims also, among those living in the north and south of the Pir Panjal range, there exists an evident cultural variation. It is mainly due to the demographic, ethnic, and linguist reasons and is manifested in the form of variations in customs, dress, and language and is quite evident.

History of Kashmir

Ancient Kashmir

The history of Kashmir dates back to 4000 years B.C.¹⁶ Kashmir's first period of imperial history begins in the third century B.C. with the rule of Ashoka. Kashmiris became famous throughout Asia as learned, cultured, and humane. "The intellectual contribution of Kashmiri writers, poets, musicians and scientists to the rest of India was comparable to that of ancient Greece to the European civilization."¹⁷ The Kashmiris have been betrayed mostly throughout their history; but although the people may have been persecuted and oppressed, the Kashmiris retained their humanistic principles.

The story of the spread of Islam in Kashmir is like a traveler's tale. A Buddhist prince Rinchen had left his home in Ladakh and had taken refuge in King Sahadeva's

court in Kashmir. At about the same time Shah Mir, a Muslim from Swat, also came to Kashmir looking for work. The Mongols had invaded Kashmir in the absence of Sahadeva, and a new king had to be found. Rinchen met a Muslim saint called Bulbul Shah, and his teachings made a deep impact on him. "Taking the name of Sadruddin, he became a Muslim, and his conversion marks the beginning of Muslim rule in Kashmir."¹⁸ This happened in the beginning of the fourteenth century and did not last long. The first great king of the Muslim period was Shahab ud Din, who came to the throne in 1354. With the peace restored after the devastation of the Mongols, Shahab ud Din devoted his attention to foreign expeditions, conquering Baltistan, Ladakh and Jammu. He also patronized the arts and architecture. He was succeeded by Qutb ud din in 1373, during whose reign, the pace of conversion to Islam increased. Muslims from west and central Asia, in search of refuge from the Mongols, arrived in Kashmir and the most influential was Mir Syed Ali; he came with hundreds of missionaries. "Islam made its way into Kashnir not by forcible conquest, but by gradual conversion."¹⁹ He was succeeded by Sikunder in 1389; he in turn was succeeded by his youngest son, Sultan Zain ul Abedeenin in 1420. The Muslim rule achieved its zenith during his rule, and he was known as the *Bud shah* (the great king). During his long reign which lasted for half a century, till 1470, the valley prospered.

When Bud Shah died in 1470, the dynasty of the Shah Mirs began to decline. In the years to come, the fame of Kashmir attracted the Mughals, but they failed in their early attempts to dominate the valley. In 1555 Ghazi Chak, a distant cousin of the Mughal emperor, conquered Kashmir and thus ended the 200-year-old dynasty of the

Shah Mirs. The Mughal king Akbar, who had succeeded to the throne in 1558, led Kashmir's incorporation into the Mughal empire. So ended Kashmir's long history as a kingdom in its own right. The conquest of Kashmir by the Mughals is generally regarded as marking the beginning of Kashmir's modern history.

Modern Kashmir

With Mughals as the rulers, Kashmir prospered. The great Akbar was followed by Jehangir, Shah Jehan and Aurengzeb, who acceded to the throne in 1658. Theirs is a story of love and romance for the beautiful valley. Jehangir alone adorned Kashmir with over 700 gardens.²⁰ However, with the decline of Mughal power in India, owing to the invasions of Nadir Shah, the governors of Kashmir became irresponsible and cruel. In 1762, in alliance with the dogra rajput ruler, the Afghans attacked Kashmir and in 1772, Jawan Sher set himself up as the independent ruler of Kashmir. The Afghan domination lasted for a little more than fifty years, but the period is generally regarded as one of the darkest in Kashmiri history. The Muslims ruled Kashmir for 479 years, from 1340 to 1819, and the era less the Afghan period) was one of peace and prosperity.²¹

The Sikh Conquest-1819. In the wake of the decline of the Afghan empire in northern India, Ranjit Singh had shown himself to be both capable and willing to fill in the vacuum. Kashmir was hit by a severe famine in 1833, ironically Ranjit Singh, the emperor never visited the valley. The Sikhs ruled the valley for about twenty-seven years from 1819 to 1846,²² and their rule was characterized by ruthless suppression and slavery, destructive taxation, confiscation of jagirs (estates), and closing of the mosques. Meanwhile, on the sidelines of Kashmir towards southern Jammu region, the Dogras (a

Hindu race) were keenly interested in the events in the valley. When Ranjit Singh died, Ghulab Singh (a dogra) had been his protege for nearly thirty years and was well placed to play his personal ambitions of ruling the State between the apparent British imperialists and the dying Sikhs.

Kashmir for Sale-1846. Relations deteriorated between the Sikhs and the British, and finally a war broke out in 1845. Ghulab Singh(the Hindu Dogra), played an important role. His scheme enabled him to become a maharaja in his own right, verified through the treaty of Amritsar in 1846.²³ According to this treaty, the state of Jammu and Kashmir was sold to Maharaja Ghulab Singh for 75 lakh rupees and he was recognized as the sovereign ruler of the state (the text of the treaty is at appendix D). The significance of this treaty was twofold; firstly, it carved out the Jammu and Kashmir region from the Sikh state of Punjab, thus segregating the two for times to come as separate entities. And secondly and more importantly, had the region not been sold by the British and remained a part of the British empire, uniform rules of independence would have applied to it in 1947 and Kashmir would be a non-issue today. However, this was not to be and generations of Dogra rulers reigned till 1947. Under their rule, the Muslim population suffered systematic oppression. Allama Sir Muhammad Iqbal, the visionary who conceived the idea of Pakistan much later, when he visited Kashmir in 1921, put to verse his distress at the poverty of the people: "In the bitter chill of winter shivers his naked body. . .Whose skill wraps the rich in royal shawls."²⁴

The Eve of Independence of the Subcontinent. At the time of division of the subcontinent in 1947, 564 princely states were given the option either to join India or

Pakistan.²⁵ All the princely states except Hyderabad, Junagadh and Kashmir exercised their option to join one of the two states. The states of Hyderabad and Junagadh, where a Hindu majority was ruled by Muslims, were occupied by the Indian army in 1947 and 1948 respectively. In the natural course, as an overwhelmingly Muslim state and because of its geographical location, Kashmir should have made its natural accession to Pakistan.²⁶ The Dogra ruler refused to accept the Muslim demand of acceding to Pakistan, and instead let loose a reign of terror and oppression against the Muslims. There was a mass pro-Pakistan uprising throughout the state and an armed struggle started. The inhabitants of Gilgit Agency also revolted and drove out the maharaja's troops. To support the Kashmiris, *Lashkars* from the tribal areas of Pakistan, rushed to the area and by 26 October 1947, they had reached the outskirts of Srinagar. The Indo-Pakistan conflict over Kashmir had been born.

The Genesis of the Dispute

General. The current revolt in Kashmir against Indian rule has deep roots in history and underlines socioeconomic, cultural, political, and religious factors. The state of Jammu and Kashmir, with its approximately 12 million people, is not only a land of snow covered Himalayas with its breath taking lakes, valleys, rivers and pine forests; but is a strategic bowl enjoying central position in the region. Thus India and Pakistan are locked on the controversy over its rightful ownership. The Kashmiris have always been considered pro-Pakistani by the Indians and thus they have never been allowed to rule themselves. The realization of the right of self determination remains a dream and the *special status* envisaged for them in Article 370 of the Indian Constitution is constantly

denied to them. Pakistan constantly tries to achieve an international resolution of the problem; which is opposed by India due to her own philosophy of bilateralism as the only recourse to conflict resolution. Thus, a status quo prevails to the detriment of the Kashmiris.

The Indian Independence Act of 1947. The princely states at the time of partition had their own *Rajas, Maharajas, Nawabs*; with the British crown exercising paramount control without interfering in their domestic domains. According to the Indian Independence Act passed by the British parliament on 16 July 1947; the British paramountcy was to lapse on 15 August 1947.²⁷ The provisions of this act were not clear as to the future status of these states. It only provided for the lapse of the British government control, however, Lord Mountbatten, the Viceroy, advised them to join either India or Pakistan. In the House of Lords, Lord Listowel, the Secretary of State for India clearly warned these states that: "The British government will not recognize your independence, no one else will; you have no choice but to join India or Pakistan."²⁸ The Viceroy repeatedly elaborated that geographic situations and communal interests should be the governing factors to be considered by the rulers while deciding accession.

There were some states over which problems arose. For example, the Muslim ruler of Junagadh, a state with a Hindu majority population, announced the state's accession to Pakistan. The Indian's responded by aiding and abetting the establishment of a *provisional government* of Junagadh on Indian territory, which attacked Junagadh with Indian support and subsequently, Indian forces invaded the state despite protests from Pakistan. Similarly in Hyderabad, a Hindu majority state, the Muslim ruler of the

state wanted to retain an independent status. India responded by attacking Hyderabad and annexing the state by force. In Jammu and Kashmir the situation was the reverse. The ruler of the state was Hindu while the population was overwhelmingly Muslim and wanted to join Pakistan. Geographically it is contiguous to Pakistan, and the valley itself had 94 percent Muslim majority, thus fulfilling the preconditions of accession as laid out in the Independence Act. The Maharaja seemingly wanted a temporary neutral status while the Indians wanted the state to themselves because of strategic reasons, as enunciated earlier.

The Radcliffe Award. The partition Plan of 3 June 1947, established under the Indian Independence Act, envisaged two boundary commissions, consisting of four High Court judges, with the chairman to hold the casting vote.²⁹ The man entrusted with that responsibility was a British lawyer, Sir Cyril Radcliffe. The objective of what came to be known as the Radcliffe Award, was to divide the provinces of Punjab in the west and Bengal in the east, leaving Muslim majority areas in Pakistan and those with Hindu majority in India. Of the three main routes by which Kashmir could be reached, two fell well within the perceived Pakistan. A third route, which was no more than a dirt track, existed via the district of Gurdaspur; which comprised of four tehsils (counties) of Shakargarh, Batala, Gurdaspur and Pathankot. Under the notional award provided in the first schedule of the Indian Independence Act, all of Gurdaspur district with a 51.14% Muslim majority had been assigned to Pakistan.³⁰ This meant that all routes to Kashmir would have fallen under the control of Pakistan. Subsequently, the revised Mountbatten Plan referred to the basis of partition by area rather than by district. Ironically, the only

unit affected was that district of Gurdaspur. Thus departure from the initial plan gave India an access to Kashmir and provided a basis for triggering the long drawn Kashmir dispute.

The Kashmiri Struggle. Basically, the struggle for the independence of Kashmir had started the day it was sold to Maharaja Ghulab Singh. Soon after the Treaty of Amritsar,³¹ the people of Kashmir started agitating against this blatant disregard of human values. They challenged the treaty on humanitarian grounds and claimed that neither the people nor their political freedom could be sold out to any individual. Kashmir was not just a piece of land, it was a state, a homeland, a political, geographic and historical entity inhabited by human beings. The British, however, adopted a policy of non-interference in the internal affairs of the state. In effect, this attitude gave a license to Ghulab Singh to perpetuate a rule of terror and repression. This oppressive policy of the Maharaja aimed at breaking the will of the people.

As mentioned earlier, the entire state of Kashmir had 77percent Muslim population at the time of independence, racially and religiously akin to Pakistan. Hence, as soon as the Partition Plan was announced, the people of Kashmir started pressuring the state government to announce its accession to Pakistan. By 15th August 1947, they made it clear through demonstrations, resolutions and petitions that they wanted Kashmir's accession to Pakistan. All the major political parties favored this accession.³² But the Hindu Maharaja had no such intentions! In order to buy himself time, the Maharaja entered into and concluded a *Stand Still Agreement* with Pakistan on 12th of August, 1947.³³ This agreement was supposed to be the first step towards the state's accession to

Pakistan. The Maharaja then went on to acquire the services of Hindu and Sikh battalions to crush all pro- Pakistan elements.

Open Rebellion. The actions of the Maharaja provoked the people of Kashmir and they decided to take up arms against the brutalities let loose by the state forces. The people of Poonch were the first to go into open rebellion. The Maharaja responded by sending troops to quell the uprising and impose martial law. But the freedom movement gained momentum and served as an initiator to the widespread rebellion for the freedom of Kashmir. The freedom fighters soon liberated the whole of Poonch, Muzaffarabad, Baramula, Bhimber and Kotli.³⁴ The tribesmen army or *Lashkars* from the NWFP (North Western Frontier Province) province of Pakistan crossed into Kashmir on 22nd October 1947, to help their brethren attain their freedom and protect them from the atrocities of the state troops.³⁵

Indian Military Intervention. The freedom fighters assisted by the tribal Lashkar advanced rapidly and captured the power house near Srinagar on 24th October 1947. It seems possible that the capital along with its airport would also have fallen to the freedom fighters. However on 27th of October, the Government of India dispatched her troops to help the state forces and effectively blocked the advance of the freedom fighters. The immediate reaction from Pakistan was to order a counter invasion. But general Douglas Gracy, the then Commander in Chief of the Pakistan Army expressed his inability to do so without the permission of Field Marshal Auckinlek, the British Indian Army Supreme Commander. The latter rushed to Lahore and threatened that in case of an invasion, all British officers serving in Pakistan Defence Forces would be immediately

withdrawn.³⁶ This resulted in keeping the Pakistani troops out of Kashmir and allowed time for India to consolidate her gains. The policy makers in Pakistan advised non-annoyance of the British hierarchy, stating that if India were to attack Lahore, Pakistan was in no position to defend as half her army was still in India. Some half-hearted clandestine support was provided to the freedom fighters until Pakistan finally decided to send her troops into Kashmir in May 1948. However, six crucial months had elapsed and the Indian army had consolidated her gains. All that was left for the Pakistan Army was to safeguard the areas liberated by the freedom fighters.

The Instrument of Accession. When Srinagar was being threatened by the freedom fighters, the Maharaja immediately requested military assistance from India, as he learnt that his writ ran no more in the state. In return, he offered accession of the State to India, through a letter addressed to the Governor General of India on the 27th of October, 1947.³⁷ On 27th October, the Indian Government accepted the accession through a reply by Lord Mountbatten, the first Governor General of independent India, "It is my Government's wish that as soon as law and order have been restored in Kashmir. . . the State's accession should be settled by a reference to the people."³⁸ The Indian army intervened the same day as the freedom fighters were in sight of the capitol. The instrument of accession is another controversy between India and Pakistan, as both have their own versions as to its legality.

Initiation of The United Nations Actions. India launched an all out offensive and captured Baramula and Uri in the first fortnight of November 1947. Thereafter, it failed to make much headway and the Indians started suffering reverses in Poonch-Nowshera

sector.³⁹ As a consequence, the Indian Government lodged a complaint with the UN Security Council on 1 January 1948. A UN Commission for India and Pakistan was constituted for an on the spot investigation.⁴⁰ The Security Council passed a resolution on 21 April 1948. This resolution was jointly sponsored by Belgium, Canada, China, Columbia, UK and USA. It envisaged that the accession of the State of Jammu and Kashmir will be decided through the democratic method of a free and impartial plebiscite (referendum); and that the UN Commission for India and Pakistan would make arrangements for a cease-fire between the two opposing forces, ensure withdrawal of troops by both India and Pakistan; and create conditions for holding a free and fair plebiscite.⁴¹ Needless to point out, these conditions have so far not been created in the last half a century!

Conclusion

Stepping into the sixth decade of their existence as sovereign states, India and Pakistan have still not resolved their tangle over Kashmir. As the one unfinished item on the agenda of what history calls the partition of the subcontinent, the problem of Kashmir continues to sour India-Pakistan relations. There can be no peace for the people of Kashmir and, in consequence, no peace for India, Pakistan of the South Asian region as a whole till the issue of Kashmir finds a just settlement in accordance with the wishes of its people and the norms of international law.

India has a stake in the consolidation of the *status quo*, Pakistan a stake in the pursuit of a principle it can ill afford to abandon without immense damage to the basic ideology behind its creation as a sovereign state. While the two grapple with

compulsions of their own, the Kashmir problem is accentuated with the passage of time and all the international community does is to continuously ignore the issue as the former swings from one conflict to another in search of an elusive peace and a New World Order. And it all began with a chain of events, buried deep in the ill-fated history of the region. It is time for a matured and realistic reappraisal of the problem.

¹Sibtain Tahira, *Kashmir and the United Nations* (Islamabad: National Institute of Pakistan Studies, 1990), 9.

²*Ibid.*, 10.

³Winston Churchill, *History of the Second World War* (London: Oxford University Press, 1958), 5.

⁴Sardar Muhammad Ibrahim, *The Kashmir Saga* (Mirpur: Vening Publishers, 1990), 9.

⁵Sibtain Tahira, *Kashmir and the United Nations*, 12; K. Sarwar Hassan. *The Kashmir Question*, 8.

⁶Niaz Ahmad, *Kashmir and Jammu, The Imperial Gazette of India* (Sang-e-Meel Publications, 1983), 73..

⁷*A Regional Setting of Jammu and Kashmir*, Annex P (Sketch of the area).

⁸Ahmad, 39.

⁹Mushtaq ur Rahman. *Divided Kashmir* (New York: Lynne Reinner Publishers, 1996), 29.

¹⁰Alaister Lamb. *Kashmir: A Disputed Legacy, 1846-1990* (London: Oxford Books, 1991), 8-9.

¹¹Ahmad, 51.

¹²*Ibid.*, 55.

¹³Raju G. C. Thomas. *Perspectives on Kashmir: The Roots of Conflict in South Asia* (San Francisco: Westview Press, 1992), 207.

¹⁴Shaheen Akhtar. *Uprising in Indian Held Jammu and Kashmir* (Islamabad: Institute of Regional Studies, 1995), 38.

¹⁵Abdul H. Suhurwardy. *Kashmir: The Incredible Freedom Fight* (Labore: Jang Publishers, 1991), 54.

¹⁶Tahira, 3.

¹⁷Victoria Schofield, *Kashmir in the Crossfire* (London: Oxford Books, 1996), 6.

¹⁸*Ibid.*, 6.

¹⁹Sir Aurel Stein, as quoted in *Ibid.*, 73.

²⁰*Ibid.*, 12.

²¹Rahman, 11.

²²*Ibid.* 12.

²³Tahira, 4.

²⁴Schofield, 15.

²⁵Rahman, 65.

²⁶Lamb, 12.

²⁷Tahira, 9.

²⁸*Ibid.*, 10.

²⁹Schofield, 20.

³⁰*Ibid.* 21.

³¹ Tahira, 35

³²Lamb, 95.

³³P. N. Bazaz, *Truth About Kashmir* (Verinag Publishers, 1987), 3.

³⁴*Ibid.*, 181.

³⁵Tahir Ami, *Mass Resistance in Kashmi* (Islamabad: Islamabad Publishers, 1995), 7.

³⁶Lamb, 159.

³⁷Joseph Korb, *Danger in Kashmir* (New Jersey: Princeton University Press, 1996), 52.

³⁸S. M. Jaffar, *Kashmir Sold and Resold* (Karachi: Book Traders, 1992), 95.

³⁹Tahira, 46.

⁴⁰Sharif Tariq, *Kashmir in Strangulation* (Pictorial Printers, 1991), 53.

⁴¹Abdul Karim, *Kashmir: The Troubled Frontiers*. London: Oxford Press, 1996.

CHAPTER 3

THE INDIAN AND PAKISTANI CLAIMS

At its core, the Kashmir problem is a result of three forces: religious nationalism based on the two nation theory represented by Pakistan, secular nationalism epitomized by India and the emerging ethnic nationalism embodied in what the Kashmiris call *Kashmiriat* or (being a Kashmiri). While the conflict and the suffering that it has imposed on the people of the state of Kashmir has attracted world attention to varying degrees in the last fifty years, seldom have concrete steps been taken to alleviate this problem. The main reason being the widely differing positions of the two major contestants, Pakistan and India. The resulting *limbo* has introduced a third factor, the Kashmiris. This addition has given a new dimension to the issue and has made solutions to it more complex.

“Every insurrection, every revolt, creates its own justification.”¹ More often than not, this justification is sought in history, which is reexamined and rewritten to suit the viewpoint of one or the other party. It is thus hardly surprising that Kashmir dispute is no exception. The State’s *accession* to India and its subsequent *integration* into the Indian Union is challenged on moral as well as legal grounds by Pakistan; and two parallel histories are being created. Both main belligerents of the dispute are trying to win over the ethnic nationalists who are struggling against the Indian occupation in IHK but are circumspect about the state’s accession to Pakistan and are voicing demands of an independent Kashmir. It is quite evident that the pulls are divergent and perhaps contribute to the maintenance of a status quo in the region; notwithstanding a very

popular uprising against the occupation forces in the IHK. It is hence necessary to examine these divergent claims so as to understand the chemistry of the problem in order to suggest remedial measures.

The Indian Case

Basic Indian Position

The government of India's official position on the state of Jammu and Kashmir, as publicly and frequently expressed in the present decade by its highest leadership, contains three basic postulates:²

1. The state of Jammu and Kashmir is now and has been since its accession to India on 26th October 1947 an integral part of the Indian Union. Nothing agreed to by India in the UN Security Council resolutions of 13th August 1948 and 5th January 1949, or in any subsequent instrument, alters this status or in any way modifies Indian sovereignty over the state.

2. The only component of the Kashmir dispute legally admissible in talks between India and Pakistan over the future status of the state pertains for the need for Pakistan to "vacate" territories illegally occupied. The future status of the state is otherwise an exclusively domestic matter to be resolved, as Indian's typically put it, *within the Four Corners of the Indian Constitution*.

3. Talks between India and Pakistan in regard to the future status of the state should be held within a strictly bilateral framework and in conformity with the Simla Agreement of July 1972.

The Legal Claim

Nearing the time of partition, India asserts that it had no mischievous designs on Kashmir. It is evident from Lord Mountbatten's visit to Kashmir in July 1947, when he was still the Governor General of British India, he told Maharaja Hari Singh that if the state acceded to Pakistan before 14th August, no one will object. "The future government of India had allowed me to give His Highness the assurance that no objection would be raised by them."³

The Maharaja waited to make a decision, as he was not sure of the diverse feelings of his subjects. He was coerced into this decision by the Pakistani attitude as the latter had imposed an economic embargo on the state and had actually invaded. Consequently, the Maharaja wrote to the British Prime Minister Atlee, "As a result of an obvious connivance of the Pakistan Government, the whole of the border from Gurdaspur side to Gilgit is threatened with invasion which has actually begun in Poonch."⁴

As the invaders grew in success, the Maharaja pleaded for military help from India on the 26th of October and signed the instrument of accession the same day. This was a perfectly legal document as required by the Government of India Act 1935 as amended and in force on 15 August 1947. The act read, "An Indian State shall be deemed to have acceded to the dominion if the Governor General has signified his acceptance of an Instrument of Accession executed by the Ruler whereby the ruler on behalf of the state declares that he accedes to the dominion."⁵ As to the legality of the Indian claim, there is no doubt that it is valid and legal. According to Michael Brecher: "Regarding the legality of the accession, in the narrow judicial sense of the term, there is

no doubt that with the acceptance by Mountbatten (as Governor General of India) of the Instrument of Accession signed by the Maharaja, Kashmir became an integral part of India. Such a procedure for accession was in accordance with the Partition Agreements. Moreover, it had the sanction of the Muslim League as evidenced in Jinnah's statements of June 16 and July 31, 1947, on the constitutional position of the Indian princes after the transfer of power."⁶

The United States of America initially accepted the international legal status of Kashmir and the Indian government's responsibility to defend it. The US representative to the United Nations (UN), Warren Austin, made a speech on 4th February 1948: "The external sovereignty of Kashmir is no longer under the control of the Maharaja. . . . With the accession of Jammu and Kashmir to India, this foreign sovereignty went over to India and is exercised by India, and that is how India happens to be here as a petitioner."⁷

In regard to the frequently floated and publicized argument that the accession of Kashmir was conditional as even its acceptance by Mountbatten conditionalized a final reference to the people of Kashmir to decide the issue, Brecher says that this conditionally imposed by Mountbatten "did not in any way affect the legality of this act which was sealed by India's official acceptance of the Instrument of Accession. Furthermore, Mountbatten specifically indicated that this Indian offer to seek the will of the Kashmiri people on the accession issue would be implemented *after* law and order had been restored in Kashmir and the invaders expelled from the State."⁸ The legal case, from the Indian point of view is pretty much cut and dried. It gives India international recognition and thus power and statutes to deal with the Kashmir problem as an internal

and domestic issue. If anyone is the aggressor, it is Pakistan that has *occupied* almost half of the state illegally for the last fifty years.

Moral Claim

India has strong moral claim on the State of Jammu and Kashmir. It takes its roots from the legality of its claim on the region and to a host of other factors. Morality of an issue stems from ethics, historical links, legality and in the case of boundaries, from actual possession of the land. In India's case regarding Kashmir, all the above-mentioned rules apply.

"Pakistan was found on religious nationalism. Being a Muslim majority state, Kashmir, Pakistan believed, should have come to it at the time of partition."⁹ But then Pakistan should realize that it has two major problems. Firstly, its founder Mr. Muhammad Ali Jinnah had "argued that the rulers of the princely states, and not the masses ruled by them, would decide as to which of the two nation states, India or Pakistan, they would join."¹⁰ As the things turned out, neither the Maharaja, nor the most popular organization of Kashmir (that was fighting the Maharaja's rule) elected to join Pakistan. Secondly, "65 million Muslims joined Pakistan at the time of partition, but 35 million were left behind; this number has grown to be almost 110 million presently."¹¹ The number of Muslims in the portion of Kashmir under Indian control is about 6.5 million as per recent figures. Pakistan's continued search for Kashmir thus is based on a paradox: If it tries to liberate Kashmir or if Kashmir breaks away with its help, Pakistan runs the risk of endangering the welfare of the remaining 100 million Muslims in India.

How many times has India to be tortured with tearing away of her body parts in the name of the so-called Muslim Question? The Muslims of the pre 1947 India have already divided themselves into two countries of Pakistan and Bangladesh. Do they now want Kashmir to be a third? Pakistan does not have any legal or moral grounds to stake a claim on Kashmir. On the other hand, India is the largest democracy in the world. Since independence from the British, the country chose to follow a path of liberalism and an unwavering belief in and practice of secularism. Kashmir is the only Muslim majority state in India and is thus a symbol of secularism. "Any decision by Kashmir to break away can empower Hindu nationalism in India."¹² The commitments made by India and especially by Pandit Jawahar Lal Nehru were to confirm the *provisional* accession through a plebiscite. Over the years, nationalism has taken the upper hand; and liberalism that threatens national security cannot be allowed to thrive or even take roots. "What good is liberalism if it can't even protect the national boundaries and national integrity due to the freedom that it offers."¹³

There is another tangent being taken into consideration that concerns the Kashmiri nationalism. It is absurd as the Kashmiris are themselves not aware as to which nationalism are they referring to:

Kashmiri nationalism has run into two objections about its consistency. First if Kashmiri leaders did not choose Pakistan despite religious affinity but opted to stay with India on grounds of secularism, shouldn't it also mean that Kashmiri nationalism is a **subset** of Indian nationalism and therefore Kashmir, with state level autonomy, part of Indian federation? What justification might there be for an independent Kashmir except bad faith and opportunism? . . . If Kashmiri nationalism is not based on religion but on Kashmiriat, a separate Kashmiri ethnicity, then it has to be realized that the Buddhists in Ladakh and the Hindus of Jammu are ethnically Tibetans and Dodras respectively, and NOT Kashmiris. . . . An ethnic notion of independent Kashmir cannot carry the entire

state without being internally inconsistent, particularly if those groups, distrusting Kashmiri dominance, do not wish to join such a state.¹⁴

Kashmir is and has always been a region where religions have synthesized and lived in harmony. It is the embodiment of Indian secularism and the state of India has all the right to consider it and deal with it as an integral part of India.

Post-1947 Era

The events after the partition of India have seen the State of Jammu and Kashmir being accorded a special status under Article 370 of the Indian Constitution in 1950. The Government of India pledged to the Kashmiri people that they will enjoy more autonomy and will receive a special status under the provisions of the above-cited article. Pandit Jawahar Lal Nehru, the then Prime Minister of India and a champion of secularism *and* liberalism made numerous vows to the Kashmiris as well as to Pakistan and the international community; "We have declared that the fate of Kashmir is ultimately to be decided by the people. This pledge we have given not only to the people of Kashmir but to the world. We will not and cannot back out of it. . . . We are anxious not to finalize anything in a moment of crisis, and without the fullest opportunity to be given to the people of Kashmir to have their say. It is for them ultimately to decide."¹⁵

India gradually pursued a policy of integration of Kashmir as a normal state in the Union. Until 1952, the Government of India had control over only three key aspects of governance; defense, foreign affairs, and communications. This was expanded to all spheres thus impinging upon the promised autonomy of the State. This trend continued and in 1963, the President of India issued an ordinance on two constitutional provisions

that allowed President's Rule to be extended to the State. While the President's Rule was in force, the Indian Parliament (who normally exercised scant legislative authority over Kashmir) was empowered to make laws for the State.¹⁶ Other changes as the change in the title of *sadr-e-Riyasat* (head of state) to Governor of Kashmir, his appointment directly by the President of India instead of the Kashmir Legislative Assembly; and the relegation of the State's Prime Minister to a normal chief minister caused wide spread dissent and carried an odor of India's intent.

India has held numerous state elections in Kashmir but they have proven to be counter productive. In fact these elections have contributed in further alienating the populace of the State. A problem does exist; but it is an internal issue of India as she exercises sovereignty over the State of Kashmir.

The Pakistani Case

Basic Pakistani Position

Historically, the Government of Pakistan has taken an official position on the dispute over the State of Jammu and Kashmir that is wholly contrary to that of India. The government as well as the popular public position on the matter has four core postulates:

1. The State of Jammu and Kashmir is now and has been since the end of British rule over undivided India, a disputed territory. The State's accession to India in October 1947 was provisional. This understanding is formally acknowledged in the UN Security Council resolutions of 13 August 1948 and 5 January 1949, to which both Pakistan and India agreed and which remain fully in force today, and it cannot be unilaterally discarded by either party.

2. Talks between India and Pakistan over the future status of the State should be focussed upon securing the right of self-determination for the Kashmiri people via conduct of a free, fair and internationally supervised plebiscite, as agreed in the aforementioned UN Security Council resolutions.

3. The plebiscite should offer the people of Kashmir the choice of permanent accession of the entire state to either Pakistan or India.

4. Talks between Pakistan and India in regard to the future status of the state should be held in conformity both with the Simla Agreement of 1972 and the aforementioned UN Security Council resolutions. An international mediator role in these talks should not be ruled out.

Resume

The Pakistani position is based on the contention that the accession of the state of Jammu and Kashmir was illegal, and therefore, there is no basis whatsoever of India's contention that the legality of the accession was *in fact and law beyond question*.

Pakistan maintains that the Maharaja of Jammu and Kashmir had no authority left to execute an Instrument of Accession on 26 October 1947 because the people of Kashmir had successfully revolted; and had overthrown his government and compelled him to flee from Srinagar, the capital. The act of accession was brought about by violence and fraud and as such, it was invalid from the beginning. The Maharaja's offer of accession was accepted by the Governor General of India, Lord Mountbatten, on the condition that as soon as law and order had been restored, the question of accession of the state will be decided by a reference to the people in the form of a referendum or plebiscite. Pakistan

also reiterates that the revolt for freedom against the Maharaja was indigenous and spontaneous, resulting from repression and misrule by his government.

The Legal Rebuttal

I should like to make it clear that the question of aiding Kashmir in this emergency is not designed in anyway to influence the state to accede to India. Our view which we have repeatedly made public, is that the question of accession in any disputed territory or state be decided in accordance with the wishes of the people and we adhere to this view.¹⁷

Jawahar Lal Nehru, Prime Minister of India, 27 October 1947

To start with, this telegram is dated the 27th of October 1947; while India to date maintains that the Instrument of Accession was signed on the 26th! And it was only after acquiring legal status over the State of Jammu and Kashmir that the Indian forces had been airlifted to the valley at 0900 hours on the 27th. Yet one finds the Prime Minister of India categorizing this *aid* as *not designed in any way to influence the state to accede to India*. There appears to be a contradiction between words and deeds.

The Accession. As regards the accession, there are four documents that form the basis of the Indian legal claim. These are:

1. An Instrument of Accession of Jammu and Kashmir to India which the Maharaja is *alleged* to have signed on 26 October 1947 (appendix E).
2. The acceptance of this Instrument by the Governor general of India, Lord Mountbatten on 27 October 1947.
3. A letter from the Maharaja to Lord Mountbatten, dated 26 October 1947, in which Indian military aid is sought in return for accession of the State to India (on terms stated in an *alleged* enclosed Instrument).

4. A letter (appendix F) from Lord Mountbatten to the Maharaja, dated 27 October 1947, acknowledging the above and noting that, once the affairs of the state have been settled and law and order restored, *the question of State's accession should be decided by a reference to the people.*¹⁸

In both pairs of documents the date of communication from the Maharaja is given as 26 October, that is to say *before* the Indian troops actually began overtly to intervene in the State's affairs on the morning of the twenty-seventh. It has been said that Lord Mountbatten insisted on the Maharaja's signature as a precondition for his approval of Indian intervention in the affairs of what would otherwise be an independent state. The date 26 October has hitherto been accepted as true by virtually all observers. It is to be found in an official communication by Lord Mountbatten, as Governor General of India, to Mr. M. A. Jinnah, his counterpart in Pakistan, on 1 November 1947; and it is repeated in the White Paper on Jammu and Kashmir, which the Government of India laid before the Indian Parliament in March 1948. Recent research, however, has demonstrated beyond a shadow of doubt that the date is false.

It is now absolutely clear that the Instrument of Accession and Maharaja's letter to Lord Mountbatten, could not possibly have been signed by the Maharaja of Jammu and Kashmir on 26 October 1947. The earliest time and date for their signature would have to be the afternoon of 27 October 1947. During 26 October, the Maharaja was travelling by road from Srinagar to Jammu. His Prime Minister, M. C. Mahajan, who was negotiating with the Government of India and the senior Indian official concerned in the state matters, V. P. Menon, were still in New Delhi where they remained overnight, and where their presence was noted by many observers. There was no communication of any sort between New Delhi and the Maharaja. Menon and Mahajan set out by air from New Delhi to Jammu at about 10.00 A.M. on 27 October; and the Maharaja learned from them for the first time as the result of his Prime Minister's negotiations in New Delhi in the early afternoon of that day.¹⁹

The clinching argument here is that these documents, *if original*, could only have been signed after the Indian military intervention in the State of Jammu and Kashmir. It is thus argued that when the Indian troops arrived at Sri Nagar airfield, the State was still independent and any agreements favorable to India signed after such an intervention, "cannot escape the charge of having been produced under duress."²⁰

Documents "3" and "4" above were published by the Government of India on 28 October 1947; however, the far more important document, the Instrument of Accession, was not published until many years later. It was not communicated to Pakistan at the outset of Indian military intervention in the State; nor was it in facsimile to the UN in early 1948 as part of the initial reference by India to the Security Council.

The 1948 White Paper in which the Government of India set out its formal case in respect to the State of Jammu and Kashmir, does not contain the Instrument of Accession as claimed to have been signed by the Maharaja; instead it reproduces an unsigned form of accession such as, it is implied, the Maharaja might have signed. To date no satisfactory original of this Instrument as signed by the Maharaja has been produced; though a highly suspect version, complete with the false date of 26 October 1947, has been circulated by the Indian side since the 1960s. On the present evidence it is by no means clear that the Maharaja ever did sign an Instrument of Accession. There are, indeed, grounds for suspecting that he did no such thing.²¹

The patently false dates of the basic Instrument of Accession fundamentally alters the nature of Indian intervention in Jammu and Kashmir on 27 October 1947. India was not defending its own territory but intervening in a foreign state. Had these facts been known earlier, Pakistan would have argued very differently in the international forum and it would have been listened to with a very different perspective.

Conditional Accession. While the date and perhaps even the fact of accession to India of the State of Jammu and Kashmir in late October 1947 can be questioned; there is no dispute that any such accession at the time was presented to the world as *conditional and provisional*. Lord Mountbatten, the Governor General of the Indian dominion; while accepting the accession, had declared that:

Consistently with their policy that, in case of any state where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the state. It is my Government's wish that, as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the State's accession should be settled by a reference to the people.²²

The essence of this text was also communicated by the Indian Prime Minister to his Pakistani counterpart in a telegram sent in the same time frame (the text of the telegram has already been quoted above). Nehru had clearly indicated that the option of reference to the people was firmly and totally agreed by him (India's commitments on Kashmir--appendix H). The argument is made! It is amply clear that the people of Kashmir had the potential of reversing the process of accession. If the people voted to join Pakistan, then any documents that the Maharaja may have signed would be null and void. The legal value of such documents would perforce be *provisional*, in that they could confer rights only until the reference to the people took place. These documents were *conditional* in the sense that they could not continue in force indefinitely unless ratified by popular vote. The legality of this point is as valid as it was in the October of 1947.

Indian political thinkers and *apologists* have endeavored to argue for a long time now that the plebiscite proposal was personal to Mountbatten and that it was in a real sense *ex gratia* and in no way binding on the subsequent Indian administrations. This is, however, not true. Jawahar Lal Nehru, the Prime Minister of India, declared on 22d November 1947 that his government, while deciding to accept the accession and to send troops to Kashmir, had:

 Made a condition that the accession would have to be considered by the people of Kashmir later when peace and order were established. We are anxious not to finalize anything in a moment of crisis, and without the fullest opportunity to the people of Kashmir to have their say. It was for them to decide. . . .It has been our policy all along that where there is a dispute about the accession of a state to either dominion, the decision must be made by the people of that state. It was in accordance with this policy that we added a proviso to the Instrument of Accession of Kashmir. . . . We have declared that the fate of Kashmir is ultimately to be decided by the people. . . .We are prepared, when peace and law and order have been established, to have a referendum held under international auspices like the United Nations.²³

Plebiscite. The fact of the matter is that plebiscite policy had been established and was a practiced norm long before the Kashmir crisis had surfaced. It was an inherent part of the process by which the British Indian Empire was partitioned in 1947. Plebiscites (or referendum--the two synonymous terms tended to be used at the time) had been held on the eve of transfer of power in August 1947 in two areas. In the North West Frontier Province, which had a Congress Government despite a virtually total Muslim population; and in Sylhet, a Muslim majority district of the Non-Muslim majority province of Assam (Bengal). These had been plebiscites where the people were given the choice of joining India or Pakistan; in both cases, the vote was in favor of Pakistan.

The value of plebiscitary process continued to be appreciated in India even after the British Indian Empire had come to an end. In September of 1947, the government of India advocated as a matter of policy, the holding of plebiscite in the Princely State of Junagadh; which in many respects was the mirror image of Kashmir. Junagadh had a Muslim ruler, the Nawab, who had formally accede to Pakistan on 15th August 1947 despite the fact that the overwhelming majority of his subjects were Hindus. The government of India vehemently opposed this action, and Pandit Nehru proposed a solution on 30 September 1947:

We are entirely opposed to war and wish to avoid it. We want an amicable settlement of this issue and we propose therefore, that wherever there is a dispute with regard to any territory, the matter should be decided by a referendum or plebiscite of the people concerned. We shall accept the result of this referendum whatever it may be, as it is our desire that a decision should be made in accordance with the wishes of the people concerned. We invite the Pakistan Government, therefore, to submit the Junagadh issue to a referendum of the people under impartial auspices.²⁴

In the Indian eyes, in other words, the validity of Junagadh's accession to Pakistan was *provisional and conditional* and dependent on the outcome of a plebiscite. India considered that the need for such a reference to the people was specifically determined by the fact that the majority of the State's population followed a different religion to that of the ruler. The Government of Pakistan agreed and a plebiscite was held in Junagadh in February and the popular vote was for union with India. In the Indian official thinking, it is evident, there was no question of a plebiscite in any state where the both the ruler and people were non-Muslims. Thus when the Kashmir crisis broke out in October 1947, Plebiscite was already established as the official Indian solution to this kind of a problem.

On 28 October 1947, Mr. Muhammad Ali Jinnah, the Governor General of Pakistan, also agreed that the answer to Kashmir problem lay in a plebiscite, thus confirming the official Pakistani policy on the subject.²⁵

The legality of Pakistan's claim and its moral ascendancy have been proved beyond a shadow of doubt. As a final argument, is quoted an opinion that by taking the Kashmir issue to the UN, Nehru committed a blunder (from the Indian perspective):

By referring to the United Nations, Nehru allowed what was domestically an Indian problem to become an international issue. If there was any argument over the ratification of the accession by Hari Singh, then the only parties to the argument could be Nehru and (Sheikh) Abdullah; how did Pakistan have any 'locus standi'? The reference to the UN gave Pakistan a place in the argument. It was perhaps the most serious error of judgement, which Nehru made, and he had no one to blame but himself.²⁶

In spite of the pro-Indian twist, even Nehru's biographer acknowledges that the dispute has taken an international turn. Pakistan's claim to hold a plebiscite to ascertain the will of the people of Kashmir have been vindicated. The Indian reference to the UN is also important in another context. The presentation of the Indian case was made under Article 35 of the Charter of the United Nations; in which the mediation of the Security Council was expressly sought in a matter which otherwise threatened to disturb the course of international peace (Un-Resolutions on Kashmir--appendix G). " The issue was an Indian request for UN mediation in a dispute which had transcended the diplomatic resources of the two parties directly involved, India and Pakistan, and not as it is frequently represented, an Indian demand of UN's condemnation of Pakistan's 'aggression.'"²⁷

The situation in the State of Jammu and Kashmir remains unresolved, and it remains a matter of international interest. Given the background to and the terms of the original Indian reference to the Security Council, can it be said today that Jammu and Kashmir (or those parts of it currently under Indian occupation) is a matter of purely internal Indian concern? The judgment is left to the reader. In the author's opinion, the United Nations retains the status in this matter, which it was granted by the original Indian reference; and the Security Council still has the duty to try and implement its resolutions.

Post-Independence Era--An Analysis

In their exuberance at having finally carved out the Muslim State of Pakistan in 1947, the Pakistani leadership lost sight of the intricate points of the Partition Plan. While the Pakistani leadership relaxed and was inextricably involved on the post-partition problems of great magnitude after a historic and miraculous achievement, the Indians continued working on plans to retrieve whatever they could from their perceived lost domains. They also realized that if Pakistan was to be undone, the foundation stone of the mischief had to be laid right underneath the foundations of Pakistan itself. It is argued that there are certain political cum diplomatic spheres where Pakistan failed to look through closely and see critical flows.

1. Pakistan should not have agreed to an arbitrary revision of the June 1947 Partition Plan. They should have insisted on finalizing the plan before the transfer of power to the two dominions took place. Had this been ensured, Gurdaspur district (less

Tehsil Shakargarh) would not have been subsequently transferred to India; allowing her the strategic advantage of an entry point into Kashmir.

2. Pakistan should have insisted on the placement of a neutral administration in the proposed Pakistani territories, and ensured transfer of all assets to this administration. As it happened subsequently, that when India marched her troops into Kashmir; Pakistan could not follow suit as a major portion of its army and almost all the financial and military assets were still in India.

3. On the eve of independence, Pakistan refused to accept Lord Mountbatten as the joint Governor General of both the Dominions. This created ill feelings, which were taken advantage of by Pandit Nehru in clinching the Gurdaspur deal.²⁸

4. Pakistani leadership also failed in convincing the Maharaja of Kashmir to opt for a union with Pakistan.

5. Allowing the induction of and the invasion by the tribesmen into Kashmir on 19 October 1947 was perhaps premature, and greatly embarrassed Pakistan's position at the diplomatic level. It also gave an excuse to India to march her troops into Kashmir.

The above shortfalls enjoy the benefit of hindsight. It must be appreciated that the period in question was one of great fluidity and anxiety. It is believed that the Pakistani leadership made a rationale decision of *accepting the lesser evil*. A proof of this may be found in Quaid-e-Azam Muhammad Ali Jinnah's radio address on 31 August 1947, when he said:

The division of India has now been finally and irrevocably effected. No doubt we feel that the carving out of this great independent Muslim State has suffered injustices. We have been squeezed in as much as it was possible, and the latest blow that we have received was the award of the Boundary Commission. It

is an unjust, incomprehensible and even perverse award. It may be wrong, unjust and perverse; and it may not be a judicial but a political award, but we have agreed to abide by it and it is binding upon us. As honourable people we must abide by it. It may be our misfortune but we must bear up this one more blow with fortitude, courage and hope.²⁹

From a neutral perspective, once the Indian troops were flown into Kashmir in late October 1947, Pakistan had lost the battle. With its hands tied behind its back, politically as well as militarily, Pakistan was in for a long and arduous struggle for the liberation of Kashmir. Entry of the Indian troops into Kashmir produced immediate results; the advance of the Kashmiri freedom fighters in collaboration with that of the tribals from Pakistan came to an abrupt halt. The result was a virtual lull in the efforts of both Pakistan and the Kashmiris that afforded precious time to India to consolidate till the 1965 Indo-Pakistan War.

1965 War. After the 1947-48 debacle, the Kashmir struggle slowly started sinking into oblivion. To get out of this limbo, President Ayub Khan, on the advice of his Foreign Minister Mr. Z. A. Bhutto, made a plan to initiate guerilla warfare inside IHK. They decided to permit the infiltration of 3,000-5,000 volunteers into the IHK to incite a rebellion from within.³⁰ The Kashmiris who had been subjected to continuous repression and brutality were so demoralized that they refused to accept assistance bait; the Operation Gibraltar as it was called, was a failure. The Indians retaliated by crossing the international border at Lahore and Sialkot resulting in the 1965 war. The war ended in a stalemate without reaching any objectives as far as Kashmir was concerned. It was followed by the Tashkent Agreement (appendix K) between India and Pakistan, which

laid down that all disputes between the two countries would be solved through mutual consultations.

The 1971 War. This war was aimed towards the Eastern Wing of Pakistan and Kashmir had little significance in the conduct of operations. It ended with a defeat of the Pakistani Forces in East Pakistan and the State of Bangladesh was born. Political observers in India and in the Western world believe that the creation of Bangladesh has nullified the Two Nation Theory; and while this viewpoint has ramifications on the very ideology of Pakistan, these observers are of a firm opinion that as far as Kashmir is concerned, Pakistan has lost any moral ascendancy that it may have enjoyed. The Pakistani position on the argument is simple: firstly, Bangladesh exists as a free and democratic Muslim country and not as a reabsorbed province of India; and secondly, if that be the case, India should be more than willing to grant the Kashmiris their right of self determination and get over with the problem! Obviously, the argument is far from reality.

The other major outcome of the war was the Simla Agreement (appendix L). The Indian side precludes any mediation on Kashmir on the authority of this agreement; *the two countries are resolved to settle their differences by peaceful means through bilateral negotiations.*³¹ Pakistan maintains that the Simla Accord does not preclude mediation or involvement of the UN; *The principles and purposes of the Charter of the United Nations shall govern the relations between the two countries* and in addition to bilateral negotiations, the disputes can be resolved *by any other peaceful means mutually agreed upon between them.*³² The legality of the argument can be and has been carried both

ways. Interpretation of the Simla Agreement has been another source of dispute whenever the Kashmir issue has surfaced between the two countries

Conclusion

The controversy of claims over the State of Jammu and Kashmir is evident. Both the belligerents blame each other as the aggressor and have continued heavy deployment of forces astride the Line of Control, the defacto line splitting Kashmir into Azad Kashmir and the IHK. Add to it Kashmiri nationalism and the issue becomes as complex as it can get. The search for a viable option for resolution of the problem cannot be complete without understanding the Kashmiri perspective and as to how does the equation balance out with this third factor. Any proposed solution is bound to take this factor into consideration for an objective analysis.

¹P. S. Jha, *Kashmir 1947: Rival Versions of History* (New Jersey, Princeton University Press, 1997), 3.

²R. G. Wirsing, *India Pakistan and the Kashmir Dispute* (Rupa and Company, 1994), 165.

³A. C. Johnson, *Mission with Mountbatten* (London: Oxford Press, 1996), 224.

⁴Damodar R. Sar Desai, "The Origins of Kashmir's International and Legal Status" in *Perspectives on Kashmir: The Roots of Conflict in South Asia*, ed. Raju G. C. Thomas (West View Press, 1991), 83.

⁵*Ibid.*, 86.

⁶M. Brecher, *The Struggle for Kashmir* (Continental Press, 1994), 185.

⁷*Ibid.*, 35.

⁸*Ibid.*, 81.

⁹A. Varhney, "Three Compromised Nationalisms," in *Perspectives on Kashmir: The Roots of Conflict in South Asia*, ed. Raju G. C. Thomas (West View Press, 1991), 195.

¹⁰*Ibid.*, 96.

¹¹*Ibid.*

¹²*Ibid.*, 197.

¹³*Ibid.*

¹⁴*Ibid.*, 198.

¹⁵J. L. Nehru, "Address to the Dominion of India, 2 November 1947," in *Historical Archives of the Radio Pakistan*, ed. Zubair Mehdi (Bhatti Publishers, 1979), 93.

¹⁶S. Ganguly, *The Crisis in Kashmir* (New Jersey, Princeton University Press, 1997), 51.

¹⁷A. Lamb, *The Myth of Indian Claim to Jammu and Kashmir* (London: Oxford University Press, 1995), 34.

¹⁸*Ibid.*, 53.

¹⁹*Ibid.*, 79.

²⁰*Ibid.*, 41.

²¹Government of India, *White paper on Jammu and Kashmir* (New Delhi Press, 1963), 47.

²²*Ibid.*, 55.

²³Lamb, 104.

²⁴M. J. Akbar, *Nehru: The Making of India* (Penguin Books, 1991), 448.

²⁵Lamb, 157

²⁶A. H. Suharwardy, *Kashmir: The Incredible Freedom Fight* (Jang Publishers, 1991), 30.

²⁷C. M. Ali, *The Emergence of Pakistan* (London: Oxford University Press, 1959), 221.

²⁸S. Tahira, *Kashmir and South Asian Security* (Friends Publishers, 1992), 21.

²⁹Ganguly, 166.

³⁰*Ibid.*, 167.

³¹A. Rogers, "Memoirs of Jahangir," in Korbel, 3.

³²J. L. Nehru, "The Unity of India," 4.

CHAPTER 4

THE KASHMIRI PERSPECTIVE

Kashmir is not a territorial dispute between India and Pakistan. It is essentially a question of the integrity, historic destiny, and future political status of 12 million people who have been fighting an unequal battle for their right of self-determination. Granted special status under Article 370 of the Indian Constitution, the maintenance of a separate identity has remained an abiding concern for the people of Kashmir in the IHK. The portion of the erstwhile state liberated in 1947 on the other hand lives peacefully in the Federally Controlled Northern Areas (FCNA) and the Azad Kashmir in Pakistan. The desire on either side of the Cease Fire Line (CFL) to reunite is strong. The differences, especially in the IHK Kashmiri population are now on the mode of this reunification. The majority still favors accession to Pakistan; but there is also a desire for an independent state. The Hindu population of the IHK is strongly opposed to any such arrangement and wants to remain a part of India. This is a paradox that the Kashmiris are living with, and one that makes settlement of the dispute even more complex. The legal history and differing claims have already been discussed; the endeavor here is to identify the roots and causes of the spirit of *Kashmiriat* and what it means in relation to this problem.

The Kashmiri Spirit

The beauty of Kashmir is of legendary proportion for the emperors of pre-modern history to the modern statesmen. In 1620, Emperor Salim Jahangir said of the region, "If one were to take to praise Kashmir, whole books would have to be written. . . . Kashmir

is a garden of eternal spring, or an iron fort to a palace of kings-a delightful flower-bed, and a heart expanding heritage.”¹ In 1940, Pandit Jawaharlal Nehru paid tribute to the land of his ancestors, “Like some supremely beautiful woman, whose beauty is almost impersonal and above human desire, such is Kashmir in all its feminine beauty of river and valley and lake and graceful trees.”²

Amongst all the natural splendor, the history of Kashmir has ironically been a sad story. “Few regions in the world can have had worse luck than Kashmir in the matter of government . . . owing partly to the cowardly character of the population, which invited oppression.”³ There are dissenting views as the Kashmiris have also been identified as people of superior intellect, who are emotional and hospitable, are, excellent craftsmen and are good at business; are very kind to their wives and children; a people who are deep into the worlds of mystique and superstition. “The Kashmiri is indeed made up of contradictions. He is timid, yet persistent, degraded yet intellectual, mystical yet adventurous, shrewd and businesslike.”⁴ On another occasion, the great Mughal Emperor Akbar was enraged by the docile character of the Kashmiris. “You Kashmiris have stomachs to eat but not to fight . . . Men? Faint-hearts, not lion-hearts.”⁵ It was a common perception that the shy Kashmiri would look at you in gentle amazement if you told him that his case had been debated before the world forum, and that his plight has from time to time made headlines across the global press. Centuries of hard life have taught the Kashmiri to be reconciled to the strange role of living in a paradise that treats him poorly. He understands that he has been forgotten by all and is helped by none; and he obediently accepts this demeaning status.⁶

Such was the plight of the Kashmiri for the most part of his existence on his *paradise on earth*. The Kashmiri history has been discussed earlier in this paper; which gives an adequate account of the tragedies that history has bestowed on the Kashmiri people. Their first chance in centuries came at the eve of the partition of British India. An event which finally afforded them the opportunity to decide their fate by themselves; but the suffering was to last longer, still. It was perhaps this cruel turn of events that shattered the traditional docile demeanor of the Kashmiri and has made him into a freedom fighter.

The Awakening

It is pertinent to note that Kashmir has been a Muslim majority state from the fourteenth century onwards; the timing roughly coincide with the increased oppression of the state. The State during this period has scarcely been ruled by Muslims and has had its share of alien rulers from the Sikhs to the Dogra Hindus. It can be said that the Kashmiri struggle for a right of self-determination, if not self-governing, started the day it was sold to Maharaja Ghulab Singh by the British through the Treaty of Amritsar in 1846. The people of Kashmir started agitating against this blatant disregard of human values.⁷ The movement soon fizzled out owing to the cruelty of the Maharaja and the nature of the Kashmiris. After another century of oppression, the first modern awakening started in the early 1930s through the toils of an unemployed teacher, Sheikh Abdullah. He was a man destined to play an important, albeit a controversial, role in the modern tragedy of Kashmir.

The Early Revolts

In the early 1930s, the waves of nonviolent movements were sweeping India, and the patriots in Kashmir renewed their claims to the admission of Muslims to the administrative and political structure, to include the military. The Maharaja reacted swiftly to the revolt and declared Martial Law in 1931 and threw Sheikh Abdullah into prison.⁸ This initial attempt was enormously significant as it was for the first time in centuries that the Kashmiris had responded to the leadership of one man and sought to throw off the old yoke of oppression. They shed their docile and servile characters, and as Sir Zaffar Ullah Khan, the Pakistan Minister of Foreign Affairs related before the United Nations on 16 January 1948, "they were mowed down by the bullets of the State Dogra troops in their uprising . . . but refused to turn back and received those bullets on their bared breasts."⁹ This movement was quenched but the spirit of resistance continued to grow. After his release from prison, Sheikh Abdullah founded the All Jammu and Kashmir Muslim Conference in 1932, claiming to represent the State's Muslim population.

In the interim period, the British tried to address Muslim grievances and asked the Maharaja to introduce certain land reforms. In the meantime, another revolt erupted and again Martial Law was imposed in 1933. This uprising was also crushed but was a unique trend setter as it had been supported from outside Kashmir. "The revolt had been helped by the Muslims from Punjab, who in tens of thousands in organized groups slipped through the open plains between Punjab and Jammu. . . . They were led by a Muslim political party of Punjab."¹⁰ The advent of 1934 saw a civil disobedience

campaign to force the Maharaja to liberalize his policies towards the Muslims, but this met the same fate.

Revolt continued to seethe in Kashmir, and finally, pressed by the British from above and the Kashmiris from below, the Maharaja on April 22, 1934, enacted the Constitutional Act, Regulation No. 1. In the first election ever held in Kashmir in 1934, the Muslim Conference captured 14 out of the 21 seats allotted in the State Assembly. It should be pointed out however, that this represented no great concession on the part of the Maharaja because the assembly was composed of 75 members, 40 of whom were elected and 35 nominated. Also the regulations that controlled the ballot (the voter had to be literate, have an income of \$80 per year, and possess \$100 worth of property) allowed only 8% of the population to vote. Finally, the Assembly itself had only consultative powers. When this fact became fully evident in 1936, all elected members of the Assembly walked out. Two years later new elections were held, and this time the Muslim Conference so controlled the Muslims of Kashmir that they elected 19 out of 21 seats allotted to the Muslims.¹¹

Up to 1939, the Muslims had been united in Kashmir through the Muslim Conference. Sheikh Abdullah started espousing secular ideas and became a close friend of Jawaharlal Nehru. This resulted in the emergence of the All Jammu and Kashmir National Conference which asked for an autonomous Kashmir in 1947, before deciding to accede to either of the dominions; a divide was implanted in the Muslim union of Kashmir. The National Conference quickly lost popular support as the Muslim Conference grew in support.¹² Abdullah speedily lost popularity and was accused of highly ulterior motives. Ironically, his political rival, Ghulam Abbas, the leader of the Muslim Conference was confined with him in prison. Both these leaders acknowledged in prison to each other and to several other people that their divide in 1939 had marked the beginning of all their troubles.¹³

Partition and Liberation Struggle

The events of Partition have been narrated earlier. Suffice it to say here that the Kashmiris were denied their right to choose their future with either of the Dominions. A trans-border invasion by the Tribals from Pakistan, coupled with popular resistance within Kashmir, managed to liberate almost half of the state (which is with Pakistan now). The other half was *saved* by the Indian troops as they landed at Srinagar Airport on 27 October 1947. It is since that day that the Kashmiris have sought their right of self-determination in the light of UN Security Council Resolutions. There has been a popular uprising against the Indian occupation in the Muslim part of the IHK, which India denounces as an interference in her internal affairs by Pakistan. This movement has gained in momentum since 1989, resulting in one-half a million Indian Security Forces being deployed into IHK.

The Kashmir liberation struggle from India can be divided into the following phase after 1948, from the Kashmiri perspective:

The Dormant Phase: 1949-1988

1949-1964. This is a period when apart from constitutional maneuvers between India and Pakistan, and some half-hearted UNCIP efforts to bring about a compromised solution, nothing of significance happened. UNCIP kept on offering resolution after resolution and India kept on rejecting them. Finally they settled at demarcating a CFL in Kashmir between India and Pakistan and to the deployment of UN observers to ensure maintenance of truce.¹ During this period, Pakistan kept on hoping for a *miracle* while India utilized this lull period to strengthen her hold on the IHK. This was achieved by

establishing a pro- Indian government under Sheikh Abdullah, and subsequently incorporating amendments in Article 370 of the Indian Constitution.¹⁴ These amendments opened the flood gates of Indian interference in IHK. The separate flag and separate national anthem of Kashmir were discarded; the Indian Supreme Court and the Election Commission gained jurisdiction over Kashmir. The All India Radio, the Controller of Import and Export, Income Tax, Land Customs, Intelligence Bureau, and other departments of the Central Government of India opened offices in the IHK and started functioning.¹⁵ As far as Pakistan and the people of Kashmir were concerned, there was hardly any major activity to improve their position vis-à-vis India.

1965-1988. This period saw a slight ray of hope for an understanding between India and Pakistan on the issue of Kashmir. "It was as a result of Pakistan's non-aggressive attitude towards India during the latter's debacle with the Chinese in NEFA in 1962."¹⁶ The hope was short lived and a possible Kashmir solution was cremated with Pandit Nehru in 1964. His successor, Lal Bahadur Shastri went along with the popular demand of fully integrating the IHK into the Indian Union. Events on both sides of the CFL took various turns, eventually leading to Pakistan's *Gibraltar* strategy of a guerrilla uprising that received an unexpected cross-border invasion by India in 1965.¹⁷

This period of almost four decades was dormant as far as struggle for freedom for the Kashmiris was concerned. Even the response to the Pakistani grand strategy in 1965 was lukewarm and it seemed that the Kashmiris were resigned to their fate. It was an era of despondency, despair, disappointment and deprivation for the people of IHK. It was however, towards the end of this period that signs of a resurgence in the people of IHK

could be seen and it seems that India failed to recognize that the dormant simmer was turning into a boil.

Resurgence of Kashmiri struggle (1989-Todate)-An Overview

Back Ground (1983-1988). The Jammu and Kashmir Liberation Front (JKLF) was the torch bearer of the Kashmiri armed struggle in the eighties. Coupled with the Muslim United Front (MUF), the group represented the hopes and aspirations of the Kashmiris, especially the youth. Denial of victory in the 1987 State Assembly elections through massive rigging and arrests of MUF candidates spread discontent.¹⁸ The aftermath of these elections caused a watershed in popular disillusionment with State politics and left many neutral Kashmiris no choice but to support emerging militant groups.

Sheikh Abdullah died in 1982 and with him ended an era of half a century which had cast lasting shadows over the political landscape of Kashmir. His son and successor, Farooq Abdullah, once frustrated with the Indian Government over the non-passage of a *Resettlement Bill* (that his father had willed at his death bed), concluded an election alliance with Mirwaiz Maulvi Farooq; a pro-Pakistani. Thus in 1983, the two divergent political pulls, the National conference and the Muslim Conference, raised the slogan of liberation.¹⁹ The following events throw some light on how the dormant struggle for liberation from India gained impetus:

1. The public hoisting of the Pakistani Flag and illuminations/fireworks at night on the eve of the Pakistan Independence Day, since 1983.

2. The Indian Independence Day being observed as the Black Day. Widespread demonstrations on the day, openly demanding Indians quit Kashmir.

3. In 1986, Farooq Abdullah forged an election alliance with the Congress Party of Rajiv Gandhi. Consequently, the 1987 elections were heavily rigged. This opportunism of Farooq Abdullah greatly annoyed the Muslim political parties, who represented the majority of the population.

4. On 11 February 1988, Maqbool Butt, a popular Kashmiri freedom fighter, who had been in detention for a long time, was hanged by the Indians.

5. On 16 July, an eleven-year-old girl was gang-raped by Indian Army personnel, as the male members of her family were tied to trees and forced to watch.

6. The detonating point was finally reached on 21 May 1990 when the leading Muslim figure of IHK, Mirwaiz Maulvi Farooq was gunned down. Subsequently, his funeral procession was fired upon by the Indian Security Forces, killing forty-seven people and wounding more than a hundred.²⁰

Resurgence (1989-Todate)

The Kashmiri uprising's semiautogenous (or non-contingent) origins deserve more attention than they ordinarily get: They are the aspect of the movement emphasized most often by Kashmiri separatists themselves; they are characteristically ignored or underplayed in the prescriptions for relief written out either by the Indians or Pakistanis; and yet they alone can account very well for the profound alienation of the Kashmiri people from India or for their surprising tenacity and sheer physical endurance in the present difficult circumstances.²¹

It must be recognized that prior to this era, the Kashmiri resistance was by and large unorganized and spontaneous. It manifested a forceful expression of deep anger and frustration caused by the brutal repression unleashed through the State apparatus.

Indian human rights violations in IHK is a subject in itself; suffice it to say that the prolonged curfews, military crackdowns, rape and molestation of women, custodial deaths, deliberate acts of arson, and desecration of mosques and sacred shrines, left the local population with little choice but to fight back.²² The repressive State policies of India have proven to be counter productive as it has pushed thousands of youth into the folds of various militant organizations. The number of *Mujahideen* (freedom fighters) which could be counted in hundreds in 1989 have swelled up to 50,000 presently.²³ The Mujahideen also were exuberant over the successful freedom struggle of the Afghan Mujahideen, who had reversed the advances of a superpower. The communal nature of the Indian State Policy has led to strong resurgence of Islamic sentiments and pro-Pakistan feelings are on the rise. The Kashmiri nationalism championed by Sheikh Abdullah and his family are falling out of favor; the birthday of Sheikh Abdullah is being celebrated as *Youm-e-Matam* (day of mourning). Overall, there is a definite rise in the pro-Pakistan and anti-Indian sentiment; and more importantly, it is a demonstrated change.²⁴

Insurgency in IHK-Analysis

It would be fair to say that the freedom movement or insurgency gained impetus since 1990. It remained on an upward trend for the first five years, settling down to a steady pace thereafter. The movement is predominantly Valley and Doda based with Kargil area relatively less active. Muslim dominated Poonch and Rajauri, Bhuddist Laddakh, and Hindu dominated Jammu, while rest have remained somewhat neutral. The morale of the Mujahideen remains high as the failure to eliminate the movement has

created an endemic sense of insecurity among the Indian Security Forces, forcing fresh injection of additional troops on a regular basis. The movement has grown and become more broad based, especially in the Muslim dominated areas of Kashmir. The Mujahideen operations have matured over time; owing to training and coordination and adoption of a kind of warfare that is dictated by the terrain and environment. The Indians rest the *blame* for the Mujahideen successes on training in Pakistan based camps and Pakistani aid in men and material delivered through infiltration across the CFL; an accusation vehemently denied by the Pakistanis. However, the Mujahideen now have the requisite freedom of action to allow geographical expansion and diversification of their operations.

Organization of the Struggle

The Kashmiri resistance and freedom struggle remained essentially at the individual level for forty years. Around 1990, militant organizations started springing up as a result of a total failure of the political process and unrestrained Indian atrocities.²⁵ However, the mushroom growth of these organizations meant a divergence of effort and multiplicity of objectives. Over the years, the Mujahideen have formed conglomerates of similarly oriented groups. The most important political and militant organizations are discussed here, enabling an appraisal of the freedom movement.

Militant Organizations

The Hizbul Mujahideen. It was formed in December 1989 and is the most popular, well-organized and coherent of all resistance groups. The group bases its ideology on commitment to the cause of Islam and aligns itself with Pakistan on the basis

of the Two Nation Theory. It does not believe in Kashmiri Nationalism and considers it to be the main cause of Kashmiri subjugation. It is in favor of accepting the UN Resolution for self-determination. The group derives its strength from the rural as well as the urban areas; and its leadership is predominantly from the professional middle class. Its popularity can be measured from the fact that the group runs parallel government in several rural areas. The strength of Hizbul Mujahideen is estimated between 25,000-30,000 men in arms.²⁶

The Jammu and Kashmir Liberation Front (JKLF). It is the oldest liberation organization in Kashmir. Its objective is to use all means available for liberation of Kashmir as a single unit. Between 1977-1987, the organization saw a gradual decline in its popularity graph but reemerged after the 1987 rigged elections. It has become actively involved in armed struggle against the Indians.²⁷ The group's ideology is based on Kashmiri Nationalism and advocates restoration of the pre-1947 independent status of Kashmir. It draws support from educated urban middle class but lacks support in the rural areas. It also claims to enjoy significant support from Kashmiri Pundits (higher class Hindus) and Buddhists of Laddakh. JKLF estimated strength is between 10,000-15,000.

Political Organizations

Tehrik-i-Hurriyat-i-Kashmir (THK). Established in 1990, it is a loosely formed alliance of thirty-two political parties. The main aim of the Tehrik has been to seek solution of Kashmir problem in accordance with the UN Resolutions. Initially the party was in favor of accession to Pakistan but due to mounting Indian repression and an urgent

need of unity amongst the various factions; it has agreed to *any solution outside the Indian constitutional framework*, under the UN auspices.²⁸ The Tehrik has largely restricted itself to exert political pressures, that is, organizing processions, strikes, and marches to UN Offices and paralyzing the daily administration. It has met with considerable success in its endeavors.

All Parties Hurriat Conference (APHC). This is an umbrella organization of thirty-five parties, which emerged as a successor to THK in 1993.²⁹ Although all major parties are constituents of the APHC, the conference remains quasi-ambiguous in terms of its objectives. Its manifesto talks of the UN Resolutions guaranteeing the right of self determination *including the right of an independent Kashmir*. Apparently it has opted for a *stop gap* attempt to satisfy the conflicting demands of different groups. APHC has a semblance of consensus, albeit inter-constituent suspicions still exist.

Mujahideen Potential--Strengths

Steady Momentum. While the insurgency has not made spectacular displays, it has sustained itself at a steady level since its inception; and has taken a heavy toll of the Indian Security Forces.

Total Alienation. Brutal repression and apathy towards the wishes of the population has created an atmosphere of total alienation against India.³⁰

Political Antipathy. A strong insensitivity to an Indian sponsored political process exists in Kashmir. Anti-Indian sentiments are so strong that no pro-Indian political party or activity can function, especially in the Valley.

Nationalism. Exists in both its forms: accession to Pakistan and independence.

As the Indians have increased in their efforts to terrorize the populace, Kashmiri nationalism is on the rise as they refuse to get into any kind of dialogue with India, short of cession from the Indian Union.

Recruitment Base. Untapped recruitment base exists in the 1.2 million voting age males distributed in the population structure of the Valley alone.

Demography. Although the Indians have reduced the overall Muslim majority in the State from 78 percent in 1947 to about 64 percent, the Valley is still 93 percent Muslim.³¹ An overwhelming majority of the Muslim population identifies itself with the movement.

Military Prowess. The Mujahideen, over the years have gained both in experience and confidence, becoming more selective in their methods and choice of targets.

Mujahideen Potential Weaknesses

Diversity of Political--Objectives. Freedom fighters are divided in their aims and objectives, resulting in nonsynergistic effects. Its two main components the JKLF and the Hizbul Mujahideen have divergent views: from independence to accession to Pakistan. There could be an excellent compliment between the two factions but their division directly benefits the Indians.³²

Lack of International Support. Although Kashmir is the longest outstanding agenda point on the UN Security Council, there has been a lack of resolve on the part of the international community to make the dispute a part of history. As an External Affairs Ministry official in India stated, "Nobody is going to interfere in India's war against

Kashmir because nothing scares the world more than the possibility of a pan-Islamic state, or even another Iran on their hands. . . . The Muslim world itself is too pre-occupied to pay any attention to the problems of a small community."³³ The statement, although nondiplomatic in nature, portrays a widely accepted school of thought.

Limited in Space. The failure of the freedom struggle in spilling to areas South of the Pir Panjal Range in Jammu have facilitated the Indian countermeasures in two ways; They can concentrate mainly on the Valley, and more importantly, they have managed to keep the movements in Kashmir and Punjab (The Sikh Problem) separated.

Absence of Direction and Leadership. Presently the movement is marred by lack of political direction and a proper command and coordinating mechanism to wage freedom struggle on a long-term basis.

Paucity of Resources. The resistance does not have the level of sophistication in terms of weapons, equipment, funding, logistic support system, and others to counter a well-trained professional army.

Mujahideen Strategy and Indian Response

The political strategy of the Mujahideen is aimed at mobilizing the population, paralyzing the Indian Administration and internationalizing the issue.³⁴ The main aim of their military strategy is to inflict maximum losses on Indian military and paramilitary forces in order to force the Indian Government to seek a settlement of the problem. The Indian counter- strategy has been to follow a *divide and rule* policy in the political sphere; and a ruthless, savage repression in the military field to break the Kashmiri will to fight.

Both sides claim successes, however, the casualties suffered by Indian Forces at the hands of the Mujahideen are close to 15,000. There are reports of their morale being adversely affected. Indian troops, including officers are reluctant to take up duty in Kashmir; and the desertion rate of units in Kashmir has doubled from a normal 10 percent to 20 percent in Kashmir.³⁵

Major Conclusions

1. For a negotiated settlement of the dispute, Pakistan and India will have to yield from their rigid stance.
2. Any solution to the Kashmir problem would only be lasting and viable if it is acceptable not only to India and Pakistan but also the people of Jammu and Kashmir.
3. Kashmir has been accepted as a disputed territory by the UN, the Western World (including USA); but there exists a lack of international will to solve the problem.
4. India will continue the strategy of repression to suppress the movement. She will only negotiate the issue if the cost becomes prohibitive.
5. The freedom fighters are not without differences. Absence of critical assets like a central leadership and uniformity of objective may in a worst scenario, result in an Afghanistan like situation.
6. Prolonged involvement of Indian Army on counter insurgency operations in JHK has sapped its discipline and moral fiber.
7. India has consistently pursued her Kashmir policy without yielding to international pressure. Making use of her leverage with the international community,

India has effectively projected Pakistan's involvement in Kashmir. This has put Pakistan on the defensive in its strategy and approach.

Conclusion

From Pakistan's perspective, the freedom movement in Kashmir needs enhanced moral and material management. To ensure better harmony between the secular and religious, pro-Pakistan and pro-independence elements, more astute political handling is essential. If directed properly, the Mujahideen have the potential of raising the level of activity to a much higher pitch. The success of the freedom movement seems to be linked to the will and resolve of Pakistan to sustain it; not to forget the endurance of the Kashmiris. As Pakistan has been wavering to different levels of support in the past, the Indian's have shown resilience and determination to crack down heavily on the Mujahideen. The Kashmiris have shown great courage and motivation and, given the required support, are capable of forcing India to think of a solution other than her military response. The freedom movement is presently quasi-rudderless and being carried through on sheer perceived freedom to be around the corner for far too long.

¹V. H. Smith, "The Oxford History of India," 100.

²G. M. D. Sufi, *Islamic Culture in Kashmir* (Mirpur Publishers, 1997), 13.

³M. Diver, "Royal India," 15.

⁴Korbel, 11.

⁵Tahir, 88.

⁶Korbel, 19.

⁷UN Security Council Official Records, 3d year, nos. 1-15, 65.

⁸Sir G. D. Montmorency, *The Indian States and the Indian Federation* (London Press, 1980), 74.

⁹Korbel, 20.

¹⁰Ibid., 21.

¹¹Ibid., 23

¹²Sir F. Bennet, *Kashmir Today* (London: Oxford University Press, 1991), 11.

¹³Amin, 66.

¹⁴Ibid., 73.

¹⁵Wirsing, 101.

¹⁶Ibid., 137.

¹⁷Human Rights Watch Asia, *India's Secret Army in Kashmir* (London Press, 1996).

¹⁸Suharwardy, 61

¹⁹Ibid., 62-64.

²⁰Wirsing, 118.

²¹Amin, 88.

²²Ibid.

²³H. Jagmohan, *Mu Frozen Turbulence In Kashmir* (Delhi: Allied Publishers, 1991), 30.

²⁴Amin, 90

²⁵Ibid. 92.

²⁶Ibid.

²⁷Ibid., 97.

²⁸Ibid., 98.

²⁹Akhtar, 6.

³⁰Rahman, 154.

³¹Ibid., 147.

³²Jan, 56.

³³Amin, 197.

³⁴Ibid., 99.

³⁵Dr. K. F. Yousaf, *Perspective on Kashmir* (Islamabad: Islamabad Press, 1994),
263.

CHAPTER 5

OPTIONS AND RECOMMENDATIONS

For half a century now, the people of IHK have been struggling to regain their right of self-determination pledged to them by the United Nations as well as by India and Pakistan. This struggle acquired a new intensity since 1989 in the wake of the winds of freedom that swept away the Soviet Empire and brought freedom to Central Asia, Caucasus and Eastern Europe. India has responded to this development with an iron fist, by deploying more than half a million security forces into IHK and letting loose a reign of terror in order to break the will of the Kashmiris, yet again. Pakistan and India remain unmoved from their traditional stance on the issue. In addition the international community continues to avoid their responsibility to assist in the resolution of this problem in light of the UN Resolutions of 1948. In this quasi-status quo scenario, where presently only the Kashmiris are a variable factor, an endeavor is made to offer and recommend options for Pakistan to pursue for the resolution of the Kashmir dispute.

For Pakistan, the Kashmir dispute portrays an ideological dilemma and therefore a departure from traditional policy is a daunting challenge. In a perfect world, Kashmiris would be given their right of self-determination, and both India and Pakistan would respect the *will of the people*, ascertained under the neutrality of the international community. Fifty years of belligerence and fighting has proved otherwise. Does this imply that Pakistan should retract its principled stand on the most sensitive issue, one considered *and* believed to be an unfinished agenda of the Partition in 1947? Arguably, not in isolation and with a compromise from the other concerned parties. Pakistan has a

strategic stake tantamount to a vital national interest in Kashmir. Resolution of the dispute through political and diplomatic means is the most humane and civilized option to be pursued through a well thought out strategy. Pakistan needs to present the Kashmir problem in a different light in order to retrieve it from the international cold storage and create a new consensus for self-determination. To this end, it is essential to delineate the strategic parameters for Pakistan.

Strategic/Operational Parameters

The Freedom Struggle. With the passage of time owing to the lack of political and financial support, a degree of stagnation is discernable in the freedom movement. Also, Indian counterinsurgency operations backed by a massive diplomatic drive have brought international pressure on Pakistan and the Mujahideen to seek an alternative to insurgency. However, the Mujahideen have reached a point of no return. Given external inducements and resources, they have the potential to escalate their activities to an unprecedented level.¹

Indian Intransigence. In addition to dealing with the uprising with brute force, India has successfully pacified the international community. This has increased their confidence and thus their intransigence over Kashmir. Therefore, India will not give up any part of Kashmir unless holding onto it becomes politically, economically or militarily untenable. Therefore the debate over a solution to the Kashmir tangle is not initially on the pros and cons of the options available; the primary question has always been : How to make India even discuss Kashmir?

The Opportunity. Opportunities presented by history and the creation of favorable circumstances in such a situation are seldom and far apart. The situation in Kashmir presently presents a unique chance for Pakistan. The conventional military imbalance has been replaced by a strategic balance. The Indians recently instigated *Bus Diplomacy*. The effort resulted in India officially acknowledging Kashmir as a disputed territory.² Additionally, in the existing scenario, the freedom struggle is a primary element that must be carefully and prudently guarded and nurtured. The Pakistani decision makers must realize that if this heroic resistance, one of a kind in Kashmiri history dies, the Kashmiri issue may be buried with it forever.³

Insensitive International Environment. In the prevailing international environment, no worthwhile international support is expected to be forthcoming unless there is a plausible policy response by Pakistan. Kashmir issue needs to be presented in an entirely different light by Pakistan to the International community; a new consensus on self-determination and self-governance needs to be created. These are the accepted norms of the *New World order*; Kosovo being a case in point. What is important is to stick to the essence but readjust the strategy.⁴ The tactics can always change for greater strategic goals and the options can always be reexamined.

Options Available

The settling of the Kashmir problem has two major facets to it. Firstly, it is diplomacy, whether it is the format of bilateral negotiations, multi-lateral or a third party mediation. From Pakistan's standpoint, the multilateral option holds definite advantages and is closest to its stance using the back drop of the UN Security Council Resolutions.

The other two formats, however, should also be pursued and rigidity avoided. The UN, or even the United States, as the mediator should be perfectly acceptable to Pakistan. The aim should be to engage India and not alienate it from a negotiated settlement, even if such negotiations are initially bilateral in nature.

The second issue and really the central question, is the option or formula to be adopted. This ranges from accession, to independence, to partition of Kashmir. Before going into the formulas, the three possible broad courses of action on which the issue can be decided need to be discussed:

Imposing a Military Solution. This is a nonstarter as it is almost out of the realm of possibility. Pakistan can ill afford to adopt a war option. The unfavorable conventional force ratio and the threat of nuclear escalation preclude this course of action. Initiating an offensive action, even if locally confined to IHK is beyond prudent strategy and experience (1965 war). Besides, the option is laden with obvious political and diplomatic pitfalls and will most likely accentuate the problem instead of breaking the dead lock. Pakistan is well advised to maintain a robust conventional defensive posture *and* strategic parity with India to preclude the latter opting for a similar solution.

Political/Diplomatic Means. Although this option has failed in the past, it remains the most civilized and prudent option. The world understands this approach and it must be vigorously pursued. The continued practice and perseverance of diplomacy, coupled with efforts on other fronts, hold a definite promise of softening up India's stance and actively involving the international community.

Manipulation of Insurgency. Pakistan is absolute in its denial of any active involvement in the Kashmir insurgency. Kashmir is a disputed territory and hence it is argued that Pakistan has a right to safeguard her vital interests and to protect the Kashmiris from a systematic ethnic cleansing. Coupled with a well-articulated diplomatic offensive, the option for Pakistan lies in the realm of manipulation and articulation of the insurgent cause in Kashmir. The strategy of fine tuning the insurgency implies stretching India to the limit of her economic, diplomatic and security tolerance threshold for Kashmir. A strategic parity should refrain India from a military adventure and is likely to bring her to the negotiating table. Within this option, there are two choices to pick from:

1. Low-Intensity Long-Duration Insurgency. This option implies a steadily paced protracted insurgency to stretch India to her tolerance threshold. The questions that arise are: Can the Mujahideen hold out for a long period? Will political, diplomatic and economic pressure on India increase with time? And can Pakistan support such an insurgency indefinitely? Such a strategy would significantly depend upon the will and determination of both the Mujahideen and Pakistan.

2. High-Intensity Short-Duration Insurgency. This implies quantitative and qualitative upgrading of the existing level of insurgency to the brink of Indian threshold. The time element is critical and the risks for Pakistan are increased both diplomatically and militarily.

Political Options and Analysis

A number of options have been identified at various fora to seek a negotiated settlement of the Kashmir imbroglio, either unilaterally or under international auspices. But a crucial point that has not attracted the attention of many is that no solution can be effective failing a demonstration of requisite political will by both India and Pakistan.⁵ All possible political solutions of balancing equation can be categorized under five main options:

Plebiscite Option. This option implies that the Kashmiris on both sides of the Line of Control be given an opportunity to decide whether they wish to join India or Pakistan, as stipulated in the UN Security Council Resolution of 21 April 1948. Even after a lapse of fifty years, this option has proved to be a non-starter as both the belligerents stick to their respective claims. The issue of Kashmiriat is altogether neglected; Kashmiriat was a quasi non-issue in 1948 but is a factor presently. Additionally, the United States and some other Western countries have shown their reservation on the implementation of the plebiscite option.⁶ Some political thinkers go a step further in questioning the viability of this option. The UN Resolution in question requires Pakistan to withdraw its forces from Kashmir as a prerequisite to the holding of plebiscite, whereas India is permitted to maintain a minimum level of forces in Kashmir. Pakistan should demand a modification of this clause in the light of ground realities in IHK.⁷ On the other hand, the Indians have never yielded to the idea of a plebiscite in the entire state.

Autonomy Option. This implies that maximum autonomy be granted to Kashmir both in the IHK and the Azad Kashmir including the Northern Areas of Pakistan. In view of India's past record, it is not far-fetched to assume that this option aims a legitimizing the status quo.⁸ Granting of autonomy to the IHK within the Indian Union will set a precedence for other Indian states that could nurture the germs of other secessionist movements. Therefore such a solution is bound to be resisted by all governments of India in the foreseeable future.⁹ As far as Pakistan is concerned, status quo is not an acceptable option as no government can afford to give it a political shape. Acceptance of such a plan by Pakistan would nullify the sacrifices made over the years by both Kashmiris and Pakistanis.

Independent Kashmir. A nonstarter for both India and Pakistan, although certain Kashmiri nationalists ascribe to the idea. As far as Pakistan is concerned, this is an unacceptable option for the following reasons:

1. Pakistan can ill afford to give up AK and put her defense in jeopardy. Independence of Kashmir would likely be followed by a demand to release the Northern Areas, which Pakistan cannot part with for strategic security reasons. This conflict will ultimately alienate Kashmir from Pakistan, pushing the new state into India's lap.
2. Economically, Pakistan's lifeline rivers would be threatened as the two largest storage dams will be adversely affected because of their location. This could severely damage the Pakistani economy and have direct ramifications on power generation and the agricultural sectors.

3. An independent Kashmir is not perceived to be economically viable. The new state would lend itself to domination struggle between Pakistan and India, and possibly intrigues for dominance by western powers and China. Independence will thus result in a melee much more complex and inherently more dangerous to the regional stability than the present day.

3. The option will also be unacceptable to the vast majority of Kashmiri Muslims who are aligned with Pakistan.

Partition of Kashmir. This does not imply the acceptance of status quo and an agreement to declare the present Line of Control into the international border. What it does imply is the partition of the State on the basis of communal composition; the Partition of India Act of 1947 applied to Kashmir as it was applied to British India. It envisages the Muslim majority areas going to Pakistan and Jammu and Ladakh going to India. A plebiscite be held in the *uncertain* regions of the Kashmir Valley and certain adjacent areas. This option is a compromise to the Indian and Pakistani rigid stances on plebiscite and provides both with a degree of satisfaction. Pakistan stands to lose both Jammu and Laddakh but accrues certain clear advantages as compared to the other options:

1. It remains to be the next best option to the accession of the whole state to Pakistan and if accepted, promises to put a quick end to the miseries of the people of Kashmir.

2. Pakistan will, in all probability, get the valley and some adjacent areas. The solution will provide geographically contiguous areas of IHK to Pakistan and will alleviate the defense and economic concerns.

3. It provides a face saving exit to the Indians, enabling India to pacify the emotional sentiments of her people.

4. It is the closest that the people of Kashmir will get to reunite the state and serves the interests of the majority Muslim population seeking accession to Pakistan

Third Option. This is a modification of the UN Resolutions of 1948 and envisages ascertaining the wishes of the people of Kashmir; whether or not they want to accede to India or Pakistan. This formula gives the Kashmiri people the *Third Option* of opting for an independent state. Although equally unacceptable to India and Pakistan, lately there has been a growing consensus over such an option in the United States and some of the European countries. Another important fact that must be borne in mind is that ever since the start of the freedom struggle, the Kashmiris have emerged as a strong and influential third party in the conflict. While commenting on the validity and viability of the third option, Dr. Mahboob ul Haq, an eminent Pakistani economist and philanthropist presents three reasons in support:

One, we (Pakistan) must present the Kashmir issue in an entirely different light before the international community to create a new consensus on self determination and self governance; second, this offers India a face saving out of its present mess; and third, it is consistent with the dictates of justice.¹⁰

The inclusion of the third option is a logical step to pacify those Kashmiris who have been advocating an independent Kashmir. Pakistan will take enormous risks in

accepting such a formula but its acceptance will accrue tremendous international support. For Pakistan, the question is of choosing the right time; the moment it has been able to galvanize all resistance parties in IHK under a single leadership, Pakistan can accept such an option. If this precondition is not met, Pakistan will probably not want to take such a huge risk, especially when it has other options to choose from.

Trusteeship Option. Another proposal that has come to light through liberals on both sides is the Trusteeship option. Essentially, this option is a combination of partition, independence and regional plebiscite. It envisages that Azad Kashmir and the Northern Areas are completely merged in Pakistan. Laddakh and Jammu, Odumpur and Kathua to be merged completely into India. The Kashmir valley plus the districts of Kargil, Doda Poonch, and Rajauri be placed under the trusteeship of the UN for a period of five years. After five years, a plebiscite be held in the UN entrusted region affording three options: independent status of that region, accession to Pakistan, or accession to India.

This again is a conglomeration of various options but holds definite promise for success. It not only provides a way out of the problem, but also offers the chance for a lasting peace in South Asia. It also provides a degree of satisfaction and a sense of achievement to the three active players: Pakistan, India and the Kashmiris.¹

Recommendations

The Recommended Option

A detailed and objective analysis of the Kashmir dispute has revealed the fact that there exists a nearly complete dead lock on the question of its resolution. The unprecedented nature of the ongoing freedom struggle probably affords the last chance

for Pakistan to get a settlement of the issue; and thus should be exploited. Pakistan has the choice of adopting a multipronged strategy; aimed simultaneously towards India, the international community and the Kashmiri freedom fighters. An effort has to be made to create an opening to make a beginning in the desired direction. In order to attract the attention of the international community, particularly the United States, Pakistan needs to present the Kashmir issue in a new light to create a new consensus. Internationally favorable environment coupled with intelligent and well-planned manipulation of the insurgency could force India to a negotiating table. To this end, the following option is recommended:

Low-Intensity, Long-Duration Insurgency. Pakistan must pursue this covert option as it has the promise of success. It is not an option free of risks, but are there any gains possible without risks? This strategy of supporting the insurgency is aimed at taking India to a point where Kashmir should become politically, economically and militarily cost prohibitive for her. For achieving this goal, all the instruments of national power be utilized, less the military in a declared conflict.

Political Initiative. (Refer appendix C) Coupled with the manipulation of insurgency, Pakistan needs to continue its efforts towards seeking a political solution. While sticking to the essence of its stance on Kashmir, Pakistan needs a new political initiative and thus, a readjustment in its strategy. Of all the options discussed earlier, perhaps the most viable one under the existing difficult circumstances is a combination of partition, limited plebiscite and UN Trusteeship. It envisages that Azad Kashmir and the Northern Areas (Baltistan and Gilgit) stay with Pakistan while parts of Jammu and

Ladakh to stay with India. The Kashmir Valley along with some parts of Jammu (Muslim majority districts) are put under UN trusteeship for a limited period, may be five years. It will enable the UN to hold a plebiscite in this region, giving the third option of independence. It will allow for the bloodshed to stop and also provide partial satisfaction to the Kashmiris, who have emerged as a strong third party.

Suggested Action Areas

Supporting the Insurgency. Pakistan must make concerted efforts, albeit covertly, to enhance the quality and strength of the freedom struggle to create the desired effects. This should be done in the form of financial, moral and political support. The movement must not be allowed to fail. To this end, efforts be made to forge unity and singleness of purpose among all factions of the Mujahideen, denying India the opportunity of capitalizing on their inner friction and strife.

Activation of Dormant Areas. The activation of areas south of the Pir Panjal Range in Jammu and those East of the Valley will accentuate Indian problems in terms of additional commitment of forces and the resultant economic and morale drain.

Political and Diplomatic Arena. By suggesting a new approach towards the political settlement of the Kashmir issue, it is neither intended to weaken Pakistan's principled stand or the UN jurisdiction. The history of UN resolutions on such complex matters is indicative of reinterpretations with the passage of time--Palestine, Cyprus and South Africa are cases in point.¹¹ Therefore, while sticking to the real essence, greater emphasis has to be laid on creative diplomacy. It is prudent for Pakistan to be flexible, imaginative and forward looking and present the recommended political option to create a

new consensus. It is through offensive and well-articulated diplomacy that the desired level of international pressure can be built to force India to the negotiating table.

The World. A vigorous diplomatic effort focussed on the UN, United States, Western as well as Islamic countries be initiated to build a consensus on the proposed option. Pakistan must gain moral ascendancy for its willingness to display flexibility. This will require astute diplomacy in the wake of emerging international diplomatic trends on the one hand, and India's economic lure in the international market on the other.

Projection of Kashmir Issue. Pakistan must capitalize on its legal and moral ascendancy on Kashmir. It must also take up the human rights issue more deliberately and highlight the Indian atrocities amounting to virtual genocide in IHK. The aim should be to appeal to the world conscience through factual and logical approaches, resulting in isolating and discrediting India at the international level.

Negotiations. Having set out its objectives, Pakistan must induce India in a meaningful dialogue. The efforts made by Pakistan in the recent years are a step in the right direction; the return of courtesy on the part of Indians through the recent bus diplomacy is indicative of a crack in the Indian rigidity. It is a painfully slow process but is destined to succeed if persevered with. An important factor for Pakistan is to appreciate the importance of the Kashmiri leadership on either side of the Line of control. They must be incorporated in all negotiations to make the whole exercise meaningful.

The Kashmiri Factor. Although there is an enhanced nationalistic feeling among a few groups of the Mujahideen, the urge to join Pakistan is still the popular sentiment of

the majority of Kashmiri Muslims. This sentiment must be jealously guarded and efforts made to bring about a consensus among the various groups.

Conclusion

On the eve of the new millennium, the sore of Kashmir has festered on the South Asian subcontinent for more than half a century. This period has seen the dissolution of empires in Asia and Africa followed by the end of the cold war with its related geo-strategic preoccupations. Among these was the imperative that the territorial integrity of countries, whether ancient or newly emergent, was non-negotiable. These preoccupations were buried with the demise of the cold war as the world witnessed the disintegration of existing countries and the formation of new states. The new world order has seen an active involvement of the international community in disputes around the globe. What is of significance is that the world has exhibited willingness in defining and protecting the rights of oppressed minorities. In the aftermath of the Gulf War, Baghdad's sovereignty became limited in the Kurdish and Shia parts of the country; the boundary with Kuwait was redrawn resulting in the loss of Iraqi territory. The events in Bosnia and the present unfolding of events in the Republic of Yugoslavia in relation to the Kosovo crisis are all testaments of this emerging trend.

An objective analysis of the prevailing conditions indicate that there exists an unprecedented opportunity to create circumstances for negotiating the issue with India and achieving a settlement on Kashmir. After all, the legal and moral claims of Pakistan are strong and have managed to keep the issue alive. The endeavor now should be to act in this window of opportunity provided by the favorable tide of world events. The

changed environments dictate a fresh and pragmatic approach by Pakistan to break the dead lock, involve the international community and make Kashmir prohibitive to India.

¹A. Cowasjee, *Kashmir Problem* (Lahore: The Dawn, 2 March 199).

²A. N. Meneon, *Pakistan: Islamic Nation in Crisis* (Vanguard Books, 1997), 236

³Amin, 14.

⁴I. Ullah, *Kashmir: Time to Wake Up* (Islamabad: The News, 8 March 1996).

⁵Yousaf, 271.

⁶M. U. Haq, *Unfreezing the Kashmir Issue* (Islamabad: The News, 8 March 1996).

⁷Ibid.

⁸A. S. Hassan, *Kashmir: Possible Solutions* (Islamabad: The News, 12 March 1999).

⁹Haq.

¹⁰Yousaf, 269.

¹¹Haq.

CHAPTER 6

LITERATURE REVIEW

General. The Kashmir dispute has been in and out of the world focus for the last five decades. The subcontinent enjoys a peculiar geostrategic importance, thus the Kashmir dispute has had its share of *zeniths* and *abysses* in the international media. The dispute itself has been written about from various perspectives through the era under review. Presently the issue has gained in status on the international forums, owing to the declared nuclear capability of both the concerned parties. Indo-Pakistan relations and the Kashmir dispute are inseparable, and thus one of the favorite topics being toyed with presently. The *quasi-cold war* between these two traditional adversaries is a growing source of concern for the international community.

Current State of Publications. The amount of current material available and being produced often depends on which part of the world is it being written. In South Asia, for example, Kashmir is a living problem where blood is shed daily. In the USA or Europe, the problem is often viewed and dealt with more on an intellectual plain, where the think tanks refer to it as one of the facets or arguments in support of a related theory, not necessarily in a problem-solving mode. There exists, however, considerable contributions to the subject. The major ones are mentioned in the succeeding paragraphs:

Perspectives on Kashmir--The Roots of Conflict in South Asia by Raju G. C.

Thomas is a collection of works of writers of varying opinions, mostly pertaining to the three groups of viewers mentioned above. The collection promises a broad envisioning of the dispute in perspective. It provides a good basis for diving deep into the varying

facets of the problem. This book, however, is devoid of any kind of analysis by the editor and tends to serve the Indian point of view on the matter by the mere number of articles in line with that school of thought. The complex nature of the dispute is well understood by the diversity of opinions expressed as to the legalities and the roots of the problem.

The book *The Kashmir Tangle* by Rajesh Kadian traces the nemesis of the dispute. It is a worthwhile resource for projecting and understanding the Indian viewpoint. Kadian argues that it is the culture of the sub continent that has played a greater role in the prolonging of this dispute. He goes on to include analysis of the problem from an Indian perspective and also talks of options available to India and Pakistan for the resolution of the problem. His underlying conclusions and the basic argument revolve around India propagating its secular status to the international community and isolating Pakistan.

In *India, Pakistan and The Kashmir Dispute*, Robert G Wirsing, after giving a detailed background including an exhaustive strategic context of Kashmir, focuses upon Pakistani and Indian policies and proffers certain recommendations. The reasons for and the possible resolutions of this dispute are the themes of Wirsing's book. Drawing on repeated field visits and wide-ranging interaction with influentials on both sides of the Line of Control, the author does provide interesting and at times, new material. He delves into the political, military, domestic, and international dimensions of the problem. Even with this incisive analysis, the author tends to toe the Indian party line in his recommendations, which are generic in nature and point towards the maintenance of status quo.

Professor Summit Ganguly has themed his book *The Crisis in Kashmir-Portents of War, Hopes of Peace* around the negation of the Pakistani claim on Kashmir and has gone in great details in trying to prove his point. His work revolves around the theory of Indian uplifting of the Kashmiris in the IHK through increased opportunities in education and social life. He argues that these steps taken by the Indian Government have raised the political acumen of the Kashmiris who now are more aware and thus want more rights. The author promotes the idea of status quo and thus negates the spirit of this thesis.

India-Pakistan and the Great Powers by William J. Barnds is a comprehensive and analytical work on the Asian subcontinent's international relations. In assessing the roles that the major powers have played in this region, the author reexamines American policy towards India and Pakistan and suggests guidelines for the future. The book essentially covers the setting, the exercise, and the inherent limitations of the roles of the five principal powers. America's policy on the subcontinent--past and present--has been carefully considered in terms of American interests and the regional conflict of Kashmir. The United States is critically but objectively taken to task for errors and omissions of policy over the years. The book is distinguished by a sense of history as the author analyzes through narration of recent history the social, economic, and political problems facing India and Pakistan.

Robert J. McMahon in *The Cold War on the Periphery--The United States, India and Pakistan* traces the United States policy towards the subcontinent and brings out the compulsions that the US had to face. He calls the US-Pakistan alliance as a blunder on

the part of American policy makers. He argues that: on the one hand, the enhanced military capability of Pakistan precluded a favorable resolution of the Kashmir dispute from the Indian perspective; while on the other hand, it virtually threw India into Moscow's lap. The book provides an excellent insight into the US policy formulation towards India and Pakistan. The irony of this policy being driven by the dictates of protecting the Middle East from a communist invasion is well covered and criticized.

The Myth of Indian Claim to Jammu and Kashmir by Alastair Lamb is an analytical historical study of facts that negate the Indian claim to the region of Kashmir and unveil the distortion of facts that go with the Indian arguments. The book traces the salients of events that took place at the time of partition and makes a documented argument in favor of the Pakistani viewpoint, as to how the systematic plan of annexing Kashmir was unfolded by the Hindus in connivance with the British. The author tries to establish the legal and moral ascendancy of Pakistani claim on Kashmir. However, the book is devoid of any new insights on the resolution of the problem.

Kashmir in the Crossfire was written by Victoria Schofield from a Kashmiri perspective; the author traces the misfortunes of the Kashmiri people. The book argues that the only chance provided to the Kashmiris to determine their own fate came in the wake of the partition of British India and that they were tricked at this instance also. The author also describes the continuous oppression of Kashmiris in the IHK and determines the roots of the present uprising. The book concludes that the best option for the Kashmiris to get their promised right of self-determination is to reengage the international community.

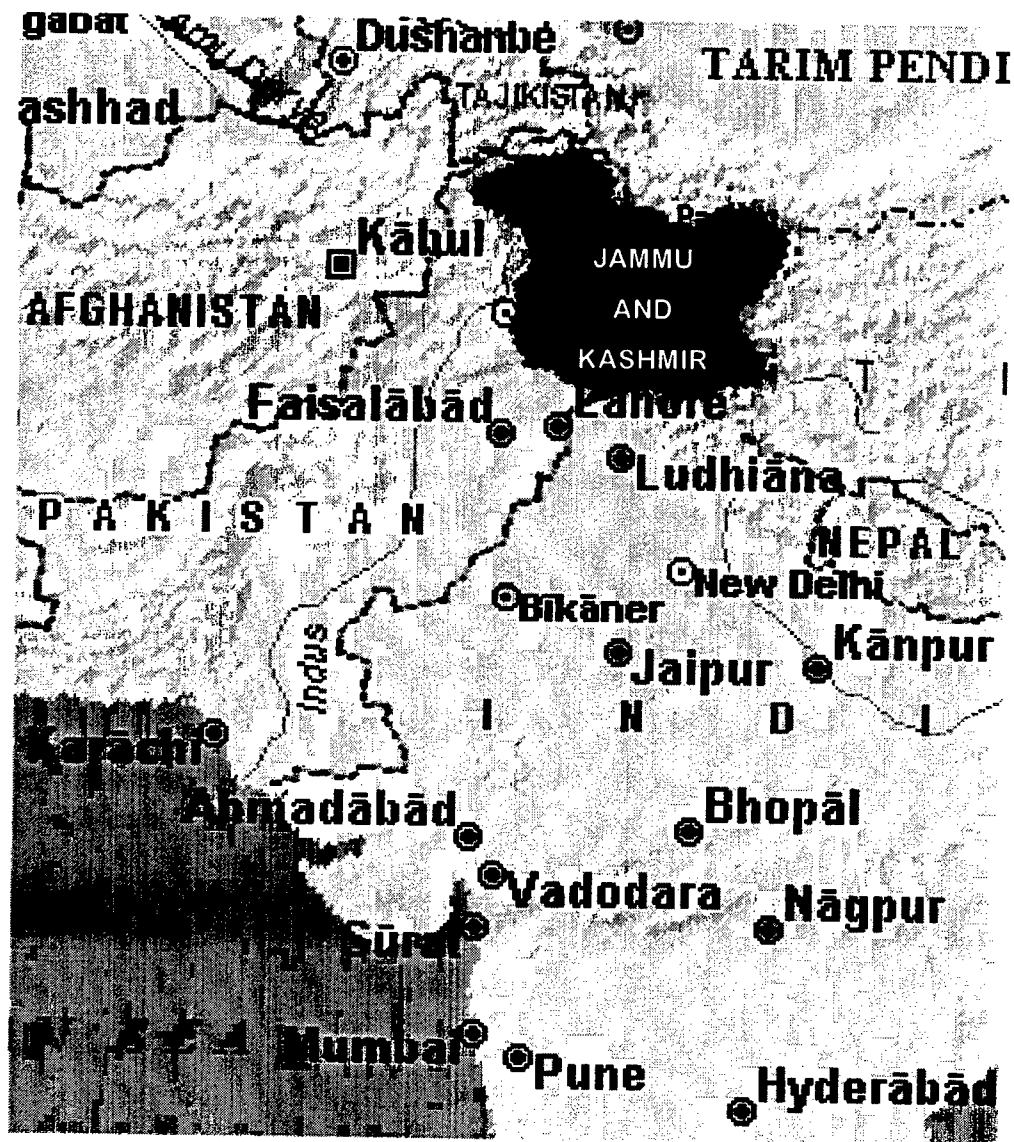
Joseph Korb in *Danger in Kashmir* painstakingly builds the roots of the conflict and emphasizes the importance of continued animosity between India and Pakistan as dangerous. The tension and resultant conflict over Kashmir is viewed in this work as not only being detrimental to regional security, but to the world peace. Korb vehemently refutes any legality of Kashmir's accession to India and terms it as a mockery of the norms of international justice. The book basically appeals to the conscience of the world community to do the right thing by granting the Kashmiris their right of self-determination.

Kashmir and the United Nations by Sibtain Tahira traces the double standards of the UN in implementing its resolutions, the case in point being Kashmir. The author argues for the Pakistani case and proves that the legality of Pakistan's claim is not in question as the declaration of Kashmir as a disputed territory by the UN has nullified the Indian argument. Her theme revolves around the lack of resolve on part of the international community to act on its their own decisions.

There are numerous other books, journals, and magazines which shed light on the conflict and have been made use of in an effort to make this study wholesome.

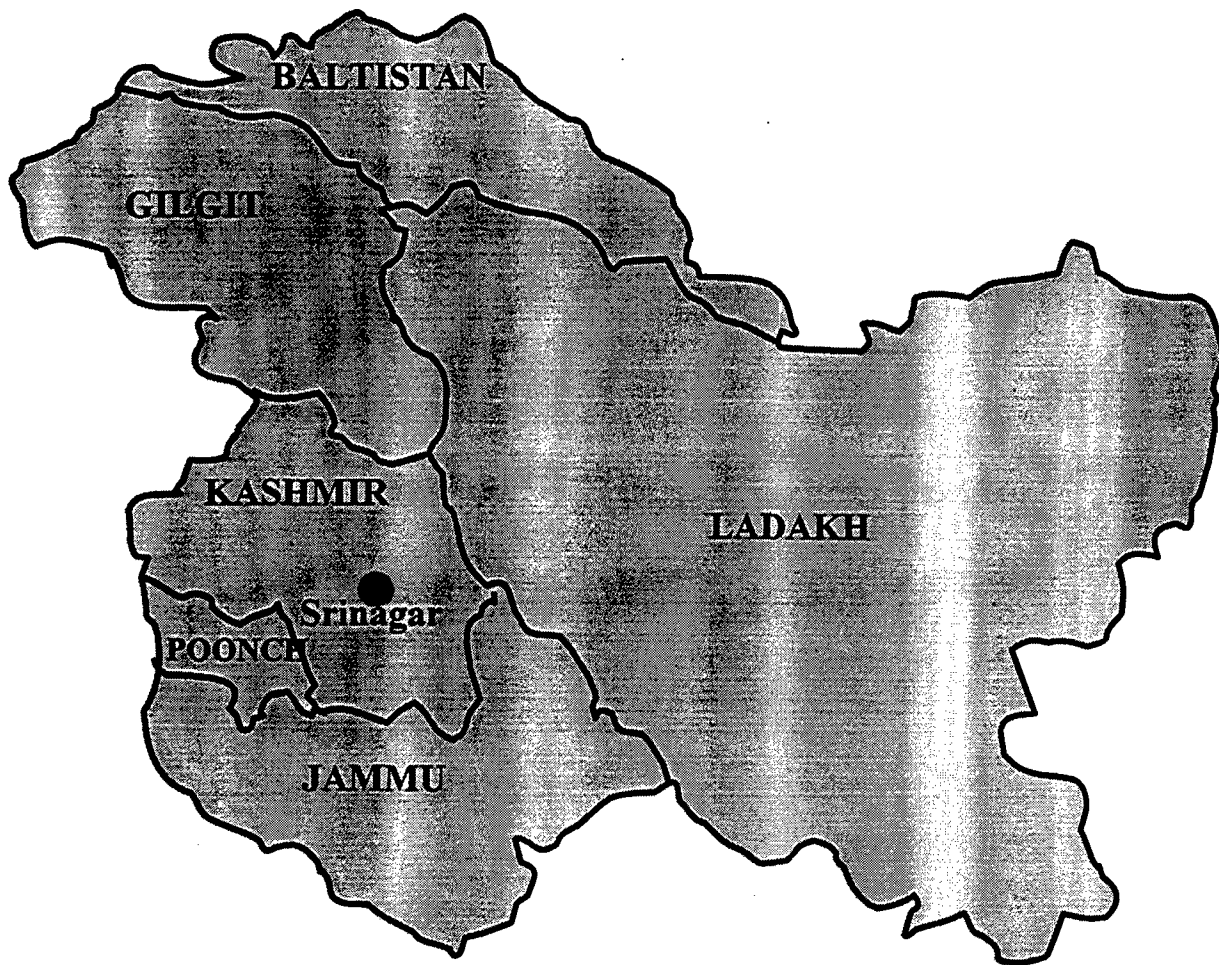
APPENDIX A

REGIONAL SETTING OF JAMMU AND KASHMIR



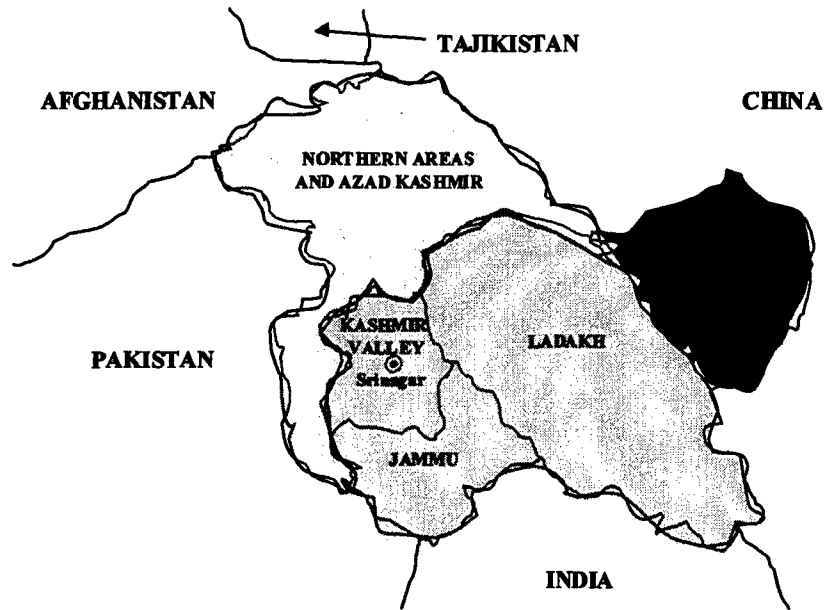
APPENDIX B

ADMINISTRATIVE DIVISIONS OF KASHMIR



APPENDIX C

GEOGRAPHICAL DIVISIONS OF KASHMIR UNDER PAKISTANI, INDIAN AND CHINESE CONTROL



LEGEND

- ◆ PAKISTANI CONTROL
- ◆ INDIAN CONTROL
- ◆ CHINESE CONTROL

APPENDIX D

CHRONOLOGY OF EVENTS

1. Kashmir as a recognized region has existed since 4000 B. C. It was also part of the renowned and well-established empire of the Hindu King Ashoka in 300 B.C.
2. First Muslim influence in Kashmir in the beginning of the fourteenth century A.D.
3. Modern history of Kashmir starts with the establishment of the Moughal Rule in 1658. The Moughal era is marked with progress and prosperity.
4. The Sikhs conquer Kashmir in A.D. 1819 and the State was ruled from the Lahore Durbar for twenty-seven years; till A.D. 1846. The Siks are ruthless and oppressive in Kashmir.
5. The British defeat the Sikhs and the State of Jammu, and Kashmir is sold to a Hindu Dogra by the British in A.D. 1846. under the Treaty of Amritsar. The British sell the State and the liberty of its people for a paltry sum of 75 Lakh Rupees. This decision on the part of the British has enduring and unfortunate ramifications on the Kashmiris.
6. British India is partitioned on night 14-15 August 1947; Kashmir as a princely state does not accede to either of the newly formed dominions of India and Pakistan.
7. Owing to pressure from the State's overwhelming Muslim population for accession to the Muslim Pakistan, the Maharaja enters into a Standstill Agreement with Pakistan on 12 August 1947.
8. The Maharaja unleashes a reign of terror on his populace triggering a tribal invasion from Pakistan on 22 October 1947. There are allegations and counter-allegations as to who is the perpetrator; the tribals reach outskirts of Srinagar, the Capitol, on 26 October 1947.
9. The Maharaja *supposedly* signs an Agreement of Accession to the dominion of India on the 26 October 1947 and Indian Army is air lifted to Srinagar Airport on the 27th of October 1947. The argument that there were no Indian Army troops in Kashmir prior to this date is disputed and Pakistan blames India for *invading* an independent state.
10. The portion liberated by the tribals and Kashmiris becomes Azad Kashmir and northern areas of Pakistan and the remainder of the State is held under Indian control.

11. India approaches the Security Council and the latter passes several resolutions to resolve the dispute in accordance with the wishes of the people of Kashmir. The *modus operandi* recommended by the UN Security Council is through a plebiscite-The UN Resolutions are never implemented.

12. Both countries stick to their respective claims and fight three wars in Kashmir.

13. Enhanced Indian oppression in IHK triggers a popular uprising in 1989 and India has to increase the number of security forces to approximately 5 million.

14. In the wake of enhanced tension over the nuclear tests conducted by both countries in 1998, Kashmir dispute takes a pivotal place in world stability.

APPENDIX E

TREATY BETWEEN THE BRITISH GOVERNMENT AND MAHARAJA GOLAB SINGH OF JUMMOO DONE AT AMRITSAR, 16TH MARCH, 1846.

Article I:- The British Government transfers and makes over forever, in independent possession, to Maharaja Golab Singh and the heirs male of his body, all the hilly or mountainous country, situated to the eastward of River Indus and westward of River Ravee, including Chumba and excluding Lahul, being part of the territories ceded to the British Government by the Lahore State, according to the provisions of Article IV, of the Treaty of Lahore, dated 9 March, 1846.

Article II:- The eastern boundary of the tract transferred by the foregoing Article to Maharaja Golab Singh shall be laid down by the Commissioners appointed by the British Government and Maharaja Golab Singh respectively for that purpose, and shall be defined in a separate engagement after survey.

Article III:- In consideration of the transfer made to him and his heirs by the provision of the foregoing articles, Maharaja Golab Singh will pay to the British Government the sum of Rupees (Nanukshahee) fifty lakhs to be paid on ratification of this treaty, and twenty-five lakhs to be paid on or before the first October of the current year, A. D. 1846.

Article IV:- The limits of the territories of Maharaja Golab Singh shall not be at any time changed without the concurrence of the British Government.

Article V:- Maharaja Golab Singh will refer to the arbitration of the British Government any disputes or questions that may arise between himself and the Government of Lahore or any other neighboring state, and will abide by the decision of the British Government.

Article VI:- Maharaja Golab Singh engages for himself and heirs to join, with the whole of his Military Force, the British Troops, when employed within the hills, or in the territories adjoining his possessions.

Article VII:- Maharaja Golab Singh engages never to take or retain in his service, any British subject, nor the subject of any European or American State, without the consent of the British Government.

Article VIII:- Maharaja Golab Singh engages to respect, in regard to the territory transferred to him, the provisions of Articles V, VI and VII of the separate Engagement between the British Government and the Lahore Durbar, dated March 11th, 1846.

Article IX:- The British Government will give its aid to Maharaja Golab Singh in protecting his territories from external enemies.

Article X:- Maharaja Golab Singh acknowledges the supremacy of the British Government, and will in token of such supremacy present annually to the British Government one horse, twelve perfect shawl goats of approved breed (six male and six female), and three pair of Cashmere shawls.

(Signed) H. HARDING
(Signed) F. CURRIE
H. M. LAWRENCE

By order of the Right Honourable the Governor-General of India

(Signed) F. CURRIE
Secretary to the Government of India with the Governor General

APPENDIX F

INSTRUMENT OF ACCESSION OF THE STATE OF JAMMU AND KASHMIR: 26 OCTOBER 1947

Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August 1947, there shall be set up an independent Dominion known as India, and that the Government of India Act 1935, shall, with such omissions, additions and adaptations and modifications as the Governor-General may by order specify be applicable to the Dominion of India;

And whereas the Government of India Act, 1935, as so adapted by the Governor General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof:

Now, therefore,

I, Shriman Indar Mahandar Rajrajeshwar Maharajadhiraj Shri Hari Singhji, Jammu Kashmir Naresh Tatha adi Deshадhipathi, Ruler of Jammu and Kashmir State, in the exercise of my sovereignty in and over my said State Do hereby execute this my Instrument of Accession and;

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu and Kashmir (hereinafter referred to as "the State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the fifteenth day of August 1947 (which Act as so in force is hereafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or the Indian Independence Act, 1947, unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorizing the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion law which

applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this instrument shall be deemed to commit me in any way to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority or rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this twenty-sixth day of October, nineteen-hundred and forty-seven.

Hari Singh Maharajadhiraj of Jammu and Kashmir State

APPENDIX G

UN RESOLUTIONS ON KASHMIR

Security Council Resolution : 21 April 1948

The UN Security Council adopted a resolution on the Kashmir Dispute on 21 April 1948. The Resolution was sponsored by Belgium, Canada, Columbia, United Kingdom and the United States of America. The text of the resolution is:

- a. That the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic way of a free and impartial plebiscite.
- b. That the members of the Commission established by the Resolution of the Security Council of January 20, 1948 shall be increased to five and if the membership of the Commission has not been completed within ten days from the adoption of the Resolution, the President of the Security Council may designate such other member or members of the United Nations as are required to complete the membership of five.
- c. When the Commission is satisfied that the tribesmen are withdrawing and arrangements for cease-fire have been effective, the Indian Government in consultation with the Commission, shall withdraw its forces from the State and reduce them to the minimum strength required for the support of civil power in the maintenance of law and order.
- d. Personnel recruited from each district to be utilized for the maintenance of law and order.
- e. Major political groups to join the government at the ministerial level while the plebiscite is being prepared and carried out.
- f. A nominee of the Secretary General to be the Plebiscite Administrator, who will end the plebiscite administration.
- g. There will be freedom of speech, press, assembly and travel including the freedom of lawful entry and exit.
- h. Indian nationals, other than those who are normally resident therein, to be withdrawn.
- j. All citizens who had left the State on account of disturbances to be invited to return to their homes.
- k. The Commission to certify whether the plebiscite has or has not been really free and impartial.

UNITED NATIONS COMMISSION FOR INDIA AND PAKISTAN: 13 AUGUST 1948

PART 1: CEASE-FIRE AND RESTORATION OF ORDER

PART 2: TRUCE AGREEMENT

PART 3: PLEBISCITE

“The Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the Truce

Agreement both Governments agree to enter onto consultations with the Commission to determine fair and equitable conditions whereby such free expression be assured.”

UNCIP RESOLUTION: 5 JANUARY 1949

“The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite.”

UN SECURITY COUNCIL RESOLUTION 122: 24 JANUARY 1957

THE SECURITY COUNCIL

Having heard the statements from the representatives of the Governments of India and Pakistan concerning the dispute over the State of Jammu and Kashmir,

Reminding the Governments and authorities concerned of the principle embodied in its resolutions 47(1948) of 21 April 1948, 51(1948) of 3 June 1948, 80 (1950) of 14 March 1950 and 91 (1951) of 30 March 1951, and the United Nations Commission for India and Pakistan Resolutions of 13 August 1948 and 5 January 1949, that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations.

APPENDIX H

INDIA'S COMMITMENTS ON KASHMIR

Mr. Jawaharlal Nehru, The First Prime Minister of India, On Kashmir

"We have declared that the fate of Kashmir is ultimately to be decided by the people. . . . We will not and cannot back out of it."

2 November 1947

"I have stated our Government's policy and made it clear that we have no desire to impose our will on Kashmir, but leave the final decision to the people of Kashmir."

3 November 1947

"We have given our pledge to the people of Kashmir and subsequently to the United Nations. We stood by it and stand by it today. Let the people of Kashmir decide."

12 February 1951

"Kashmir is not a commodity for sale or to be bartered. It is an individual existence and its people must be the final arbiters of their future."

6 July 1951

"If after a proper plebiscite the people of Kashmir say, *we do not want to be with India*, we are committed to accept that. We will accept it though it may pain us. We will not send an army against them. We will accept that, however hurt we may feel about it. We will change the constitution if necessary."

26 June 1952

"I want to stress that it is only the people of Kashmir who can decide the future of Kashmir. It is not that we have merely said that to the United Nations and to the people of Kashmir, it is our conviction and one that is born out of the policy that we have pursued not only in Kashmir but everywhere."

"I started with the assumption that it is for the people of Kashmir to decide their own future. We will not compel them. In that sense, the people of Kashmir are sovereign."

7 August 1952

Indian Government's Assurances

Nehru's Telegram to Liaquat Ali Khan (Prime Minister of Pakistan): 27 October 1947

"I should like to make it clear that the question of aiding Kashmir in this emergency is not designed in any way to influence the State to accede to India. Our view which we have repeatedly made public is that the question of accession in any disputed territory or state must be decided in accordance with the wishes of the people and we adhere to this view."

Nehru's Telegram to Liaquat: 31 October 1947

"Our assurance that we shall withdraw our troops from Kashmir as soon as peace and order are restored and leave the decision about the future of the State to the people of the State is not merely a pledge to your government but also to the people of Kashmir and to the world."

Nehru's Pledge: Broadcast on 2 November 1947

"We have decided to accept this accession and to send troops by air, but we have made a condition that the accession would have to be considered by the people of Kashmir later when peace and order were established. We are anxious not to finalize anything in a moment of crisis, and without the fullest opportunity to the people of Kashmir to have their say. It was for them ultimately to decide."

"And here let me make it clear that it has been our policy all along that where there is a dispute about the accession of a state to either Dominion, the decision must be made by the people of the State. It was in accordance with this policy that we added a proviso to the Instrument of Accession of Kashmir."

"We have declared that the fate of Kashmir is ultimately to be decided by the people. That pledge we have given, and the Maharaja has supported it not only to the people of Kashmir but the world. We will not and cannot back out of it. We are prepared when peace and law and order have been established to have a referendum held under international auspices like the United Nations. We want it to be a free and just reference to the people, and we shall accept their verdict. I can imagine no fairer or juster offer."

Nehru's Telegram to Liaquat: 3 November 1947

"I wish to draw your attention to broadcast on Kashmir that I made last evening. I have stated my Government's policy and made it clear that we have no desire to impose our will on Kashmir but to leave the final decision to the people of Kashmir. I further stated that we have agreed on an impartial international agency like the United Nations supervising any referendum."

Extract From Government of India's Letter to the UN Security Council, 31 December 1947

"But in order to avoid any possible suggestion that India had utilized the State's immediate peril for her own political advantage, the Government of India made it clear that its people would be free to decide their future by the recognized democratic method of plebiscite or referendum which, in order to ensure complete impartiality, might be held under international auspices."

Indian Representative's Assurance to the UN Security Council, 29 May 1951

"I reaffirm that so far as the Government of India is concerned, the Constituent Assembly for Kashmir is not intended to prejudice the issue before the Security Council or come in its way."

APPENDIX I

ACCEPTANCE OF THE INSTRUMENT OF ACCESSION

Text of Lord Mountbatten's letter dated 27 October 1947, to signify his acceptance (as the first Governor General of India) of the Instrument of Accession:

"My dear Maharaja Sahib,

Your Highness's letter dated 26 October has been delivered to me by Mr. V. P. Menon. In the special circumstances mentioned by Your Highness, my Government have decided to accept the accession of Kashmir State to the Dominion of India. In consistence with their policy that in the case of any state where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that, as soon as law and order have been restored in Kashmir and its soil cleared of the invader, the question of the State's accession should be settled by a reference to the people.

Meanwhile, in response to Your Highness' appeal for military aid, action has been taken today to send troops of the Indian Army to Kashmir. . . ."

Mountbatten of Burma

APPENDIX J

SECTION 370 OF THE INDIAN CONSTITUTION

370. Temporary provision with respect to the State of Jammu and Kashmir-

(1) Notwithstanding anything in the constitution;

(a) the provision of article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of the Parliament to make laws of the said State shall be limited to:-

*those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to the matters specified in the Instrument of Accession of the State to the Dominion of India the matters with respect to which the Dominion Legislature may make laws for the State; and

*such other matters in the said lists, as, with the occurrence of the Government of the State, the President may by order specify.

Explanation-For the purposes of this article, the Government of the State means the person for the time being recognized by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) the provisions of article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this constitution shall apply in relation to that State subject to such expectations and modifications as the President may by order specify:

Provided that no such order which relates to the matter specified in the Instrument of Accession of the State, shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of then State referred to in the sub-paragraph of sub-clause (b) of clause (1) or in the second proviso of sub0clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provision of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendations of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

APPENDIX K

THE TASHKENT DECLARATION: 10 JANUARY 1966

The Prime Minister of India and the President of Pakistan, having met at Tashkent and having discussed the existing relations between India and Pakistan, hereby declare their firm resolve to restore normal and peaceful relations between their countries and to promote understanding and friendly relations between their peoples. They consider the attainment of these objectives of vital importance for the welfare of the 600 million people of India and Pakistan.

(I) The Prime Minister of India and the President of Pakistan agree that both sides will exert all efforts to create good neighborly relations between India and Pakistan in accordance with the United Nations Charter. They reaffirm their obligation under the Charter not to have recourse to force and to settle their disputes through peaceful means.

They considered that the interests of peace in their region and particularly in the Indo-Pakistani sub-continent and, indeed, the interests of the peoples of India and Pakistan were not served with the continuance of tension between the two countries. It was against this background that Jammu and Kashmir was discussed, and each of the sides set forth its respective position.

Troops Withdrawal

(II) The Prime Minister of India and the President of Pakistan have agreed that all armed personnel of the two countries shall be withdrawn not later than February 25, 1966, to the positions that they held prior to August 5, 1965, and both sides shall observe the cease-fire terms of the cease-fire line.

(III) The Prime Minister of India and the President of Pakistan have agreed that relations between India and Pakistan shall be based on the principle of non-interference in the internal affairs of each other.

(IV) The Prime Minister of India and the President of Pakistan have agreed that both sides will discourage any propaganda directed against the other country, and will encourage propaganda which promotes the development of friendly relations between the two countries.

(V) The Prime Minister of India and the President of Pakistan have agreed that the High Commissioner of India to Pakistan and the High Commissioner of Pakistan to India will return to their posts and the normal functioning of the diplomatic relations of both countries will be restored. Both governments shall observe the Vienna Convention of 1961 on diplomatic intercourse.

Trade Relations

(VI) The Prime Minister of India and the President of Pakistan have agreed to consider measures towards the restoration of economic and trade relations, communications as well as cultural exchanges between India and Pakistan, and to take measures to implement the existing agreements between India and Pakistan.

(VII) The Prime Minister of India and the President of Pakistan have agreed that they give instructions to their respective authorities to carry out the repatriation of the prisoners of war.

(VIII) The Prime Minister of India and the President of Pakistan have agreed that both sides will continue the discussions of questions relating to the problem of refugees

and eviction of illegal immigration. They also agree that both sides will create conditions which will prevent the exodus of people. They further agreed to discuss the return of the property and assets taken over by either side in connection with the conflict.

(IX) and (X) The Soviet leaders thanked.

APPENDIX L

THE SIMLA AGREEMENT: 2ND JULY 1972

“The Government of Pakistan and the Government of India are resolved that the two countries put an end to the conflict and confrontation that have hitherto marred their relations and work for the promotion of a friendly and harmonious relationship and the establishment of doable peace in the subcontinent, so that both countries may henceforth devote their resources and energies to the pressing task of advancing the welfare of their peoples.

In order to achieve this objective, the Government of Pakistan and the Government of India have agreed as follows:

1. That the principles and purposes of the charter of the United Nations shall govern the relations between the two countries;
2. That the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation and both shall prevent the organization, assistance and encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations;
3. That the prerequisite for reconciliation, good neighborliness and durable peace between them is a commitment by both the countries to peaceful co-existence, respect for each others territorial integrity and sovereignty and non-interference in each other's internal affairs, on the basis of equality and mutual benefit;

4. That the basic issues and causes of conflict which have beeved the relations between the two countries for the last 25 years shall be resolved by peaceful means;

5. That they shall always respect each other's national unity, territorial integrity, political independence and sovereign equality;

6. That in accordance with the Charter of the United Nations they will refrain from the threat or the use of force against the territorial integrity or political independence of each other.

"Both governments will take steps within their power to prevent hostile propaganda directed against each other. Both countries will encourage the dissemination of such information as would promote the development of friendly relations between them.

"In order progressively to restore and normalize relations between the two countries step by step, it was agreed that:

1. Steps shall be taken to resume communications, postal, telegraphic, sea, land including border posts, and air links including overflights.

2. Appropriate steps shall be taken to promote travel facilities for the national of the other country.

3. Trade and cooperation in economic and other agreed fields will be resumed as far as possible.

4. Exchange in the field of science and culture will be promoted.

"In this connection, delegations from the two countries will meet from time to time to work out the necessary details.

“In order to initiate the process of the establishment of durable peace, both the governments agree that:

1. Pakistani and Indian forces shall be withdrawn to their side of the international border.

2. In Jammu and Kashmir, the Line of Control resulting from the Cease-fire of December 17, 1971, shall be respected by both sides without prejudice to the recognized position of either side. Neither side shall seek to alter it unilaterally irrespective of mutual differences and legal interpretations. Both sides further undertake to refrain from threat or the use of force in violation of this line.

3. The withdrawals shall commence upon entry into force of this agreement and shall be completed within a period of 30 days thereof.

“This agreement will be subject to ratification by both countries in accordance with their respective constitutional procedures, and will come into force with effect from the date on which the instruments of ratification are exchanged

“Both governments agree that their respective Heads will meet again at a mutually convenient time in the future and that, in the meanwhile, the representatives of the two sides will meet to discuss further the modalities and arrangements for the establishment of durable peace and normalization of relations, including the question of repatriation of the prisoners of war and civilian internees, a final settlement of Jammu and Kashmir and the resumption of diplomatic relations.

ZULFIQAR ALI BHUTTO
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